

Bill No. CS for SB 1956

Amendment No. ____ Barcode 221764

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	05/01/2003	.	
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11	Senator Lee moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 19, lines 17-18, delete those lines		
15			
16	and insert:		
17	Section 8. <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 regional</u>		
24	<u>water supply authority, serving three or fewer counties, that</u>		
25	<u>is authorized to construct, operate, and maintain such a</u>		
26	<u>regional reservoir shall be deemed a governmental entity under</u>		
27	<u>section 70.001, Florida Statutes, the Bert J. Harris, Jr.,</u>		
28	<u>Private Property Rights Protection Act, for purposes of this</u>		
29	<u>section.</u>		
30	<u>(2) This section provides a cause of action for the</u>		
31	<u>actions of a regional water supply authority, in siting and</u>		

Bill No. CS for SB 1956

Amendment No. ____ Barcode 221764

1 constructing a reservoir as described in subsection (1), that
2 may not rise to the level of a taking under the State
3 Constitution or the United States Constitution. This section
4 may not necessarily be construed under the case law regarding
5 takings if the action of a regional water supply authority
6 does not rise to the level of a taking. The provisions of this
7 section are cumulative and do not abrogate any other remedy
8 lawfully available, including any remedy lawfully available
9 for the actions of a regional water supply authority that rise
10 to the level of a taking. However, a regional water supply
11 authority may not be liable more than once for compensation
12 due to an action of the regional water supply authority that
13 results in a loss of value for a subject real property.

14 (3) Each owner of real property located within 10,000
15 feet of the the center of the footprint of a regional
16 reservoir, as described in subsection (1), or 5,500 feet from
17 the exterior of the berm of such reservoir, may present a
18 claim for compensation in writing to the head of the regional
19 water supply authority on or before December 31, 2004, for a
20 loss in property value resulting from the proximity of the
21 reservoir. For each claim presented under this section,
22 section 70.001, Florida Statutes, applies, except when there
23 is conflict with this section, the provisions of this section
24 shall govern.

25 (a) The property owner must submit along with the
26 claim a bona fide, valid appraisal that supports the claim and
27 demonstrates the loss in fair market value to the real
28 property.

29 (b) A claim under this section shall be presented only
30 to the regional water supply authority that is authorized to
31 construct, operate, and maintain the reservoir.

Bill No. CS for SB 1956

Amendment No. ____ Barcode 221764

1 (4) The Legislature recognizes that construction and
 2 maintenance of a regional reservoir may not necessarily
 3 interfere with allowable uses of real property near the
 4 reservoir. However, the siting and construction of the
 5 reservoir may result in an actual loss to the fair market
 6 value of real property located within 10,000 feet of the
 7 center of the footprint of the reservoir, or 5,500 feet from
 8 the exterior of the berm, because of the proximity of the
 9 reservoir. Therefore, any offer of compensation by the
 10 regional water supply authority shall be based solely on the
 11 loss of value for the property owner as a result of the
 12 proximity of the reservoir and not on the effects the
 13 reservoir has on existing uses or on a vested right to a
 14 specific use of real property.

15 (a) Notwithstanding section 70.001, Florida Statutes,
 16 the regional water supply authority to whom a claim is
 17 presented shall, not later than 180 days after receiving such
 18 claim:

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

23 2. Make a written offer to purchase an interest in
 24 rights of use which may become transferable development rights
 25 to be held, sold, or otherwise disposed of by the regional
 26 water supply authority; or

27 3. Terminate negotiations.

28 (b) An offer by the regional water supply authority to
 29 purchase the property in fee or purchase an interest in rights
 30 of use under this section shall cover the cost of the
 31 appraisal required in subsection (3).

Bill No. CS for SB 1956

Amendment No. Barcode 221764

1 (5) During the 180-day period, unless the property
2 owner accepts a written offer for purchase pursuant to
3 subparagraph (4)(a)1. or 2., the regional water supply
4 authority shall issue a final decision stating that:

5 (a) The real property has a loss in value due to an
6 inordinate burden on the property resulting from the proximity
7 of the reservoir and the regional water supply authority and
8 property owner cannot reach agreement on the amount of
9 compensation; or

10 (b) The property owner has failed to establish a basis
11 for relief under the provisions of this section and section
12 70.001, Florida Statutes.

13
14 Failure of the regional water supply authority to issue a
15 final decision as required by this subsection shall cause the
16 written offer or termination of negotiations required in
17 subsection (4) to operate as a final decision. As a matter of
18 law, this final decision constitutes the last prerequisite to
19 judicial review of the merits for the purposes of the judicial
20 proceeding provided for in section 70.001, Florida Statutes.

21 (6) The circuit court, for purposes of this section,
22 shall determine whether, considering the written offer and
23 final decision, the regional water supply authority has
24 inordinately burdened the subject real property. Following a
25 determination that the regional water supply authority has
26 inordinately burdened the real property, the court shall
27 impanel a jury to determine the total amount of compensation
28 to the property owner for the loss in value due to the
29 inordinate burden to the subject real property.

30 (7) Pursuant to section 70.001, Florida Statutes, the
31 court may award reasonable costs and attorney's fees and the

Bill No. CS for SB 1956

Amendment No. ____ Barcode 221764

1 court shall determine the amount. If the court awards the
2 property owner reasonable costs and attorney's fees, the costs
3 shall include the cost of the appraisal required in subsection
4 (3).

5 (8) This section is repealed effective January 1,
6 2005. However, the repeal of this section shall not affect a
7 claim filed on or before December 31, 2004.

8 Section 9. If any provision of this act or the
9 application thereof to any person or circumstance is held
10 invalid, the invalidity does not affect other provisions or
11 applications of this act which can be given effect without the
12 invalid provision or application, and to this end the
13 provisions of this act are declared severable.

14 Section 10. Except as otherwise expressly provided in
15 this act, this act shall stand repealed effective July 1,
16 2008, unless purchase of the right-of-way for the

17
18 (Redesignate subsequent sections.)
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20

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 2, line 7, after the semicolon

24
25 insert:

26 providing legislative findings with respect to
27 loss of property values due to the proximity of
28 a regional water reservoir; authorizing a cause
29 of action for a property owner; specifying a
30 period during which a property owner may
31 present a claim for compensation to the

Bill No. CS for SB 1956

Amendment No. ____ Barcode 221764

1 regional water supply authority that
2 constructs, operates, and maintains the
3 reservoir; providing requirements for the offer
4 of compensation by a regional water supply
5 authority; providing for judicial review under
6 the Bert J. Harris, Jr., Private Property
7 Rights Protection Act; providing for an award
8 of costs and attorney's fees; providing for
9 future repeal of the section; providing for
10 severability

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