

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Bert Harris Private Property Rights Protection Act

Currently, section 70.001, F.S., sets forth the Bert Harris Act, which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable, investment-backed expectation for the property. A 180-day time period is required between filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density.

This legislation provides an agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, an immediate cause of action under the Bert Harris Private Property Rights Protection Act. In addition, the 180-day time period is reduced to 60 days.

Agricultural Enclaves

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (act), ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The act contains a special designation and specific provisions relating to an urban infill and redevelopment area. However, there is neither designation of property as an “agricultural enclave” nor any special provisions pertaining to such an area.

The bill establishes an “agricultural enclave” designation and authorizes the owner(s) of such to apply for a comprehensive plan amendment that would include densities and intensities of use consistent with surrounding industrial, commercial, and residential uses. The property must meet Greenbelt criteria and have been in agricultural production for the past five years.

Land Acquisition

Chapter 259, F.S., is entitled “Land Acquisitions for Conservation and Recreation,” and contains Florida’s nationally recognized land acquisition programs: the Conservation and Recreation Lands Program (CARL), the Preservation 2000 program (P2000), and the Florida Forever program.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands, and to conserve and protect environmentally unique and irreplaceable lands, and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program’s purchases. The CARL program was replaced by the P2000 and Florida Forever programs. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate

severance tax revenue which is used to manage conservation and recreation lands, but is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvement Trust Fund.

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of \$300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the DACS received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than \$3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agricultural lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

The bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of purchase.

Regional Water Supply Planning

In 1997, the Legislature enacted ch. 97-160, Laws of Florida, and directed that water management districts initiate water supply planning for each water supply planning region identified in a district water management plan where the district determines that sources of water are not adequate to supply water for existing and projected reasonable-beneficial uses. These regional water supply plans are to include water supply development and water resource development components, recovery and prevention strategies, and funding strategies. Water supply development components must identify the amount of water needed for existing and future uses with a level of certainty based on needs for a 1-in-10-year drought event, a list of water source options, the estimated amount of water available, and the costs of and potential source for those options.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. In addition, water management districts are required to consider information provided by the University of Florida's Bureau of Economic and Business Research (BEBR) when determining population projections for public water supply. Furthermore, the bill provides for adjustments and deviations from the BEBR projections to be described and for the presentation of the original BEBR data along with the adjusted data.

Consumptive Use Permits

Water use permits can be issued to non-government individuals or entities for a period of up to 20 years but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20-years.

Memorandum of Agreement for Agricultural Related Exemption

And lastly, the bill establishes a process by which each water management district would enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in s. 373.406, F.S.

C. SECTION DIRECTORY:

Section 1: Creating s. 70.005, F.S.; providing a landowner whose agricultural land has suffered an inordinate burden due to a change in classification or zoning or the lowering of the residential density designation has an immediate cause of action; and, reducing the notice period from 180 days to 60 days.

Section 2: Amending s. 163.2514, F.S.; providing a definition for “agricultural enclave.”

Section 3: Amending s. 163.2517, F.S.; providing owner(s) of an agricultural enclave may apply for an amendment to local government comprehensive plan which may include uses and intensities consistent with the surrounding industrial, commercial, or residential areas; and, providing that such amendment to a local comprehensive plan shall be deemed to prevent urban sprawl and meet compliance requirements of s. 163.3184, F.S., if consistent with applicable provisions.

Section 4: Creating s. 259.047, F.S.; requiring that when lands, with existing agricultural leases, are purchased, the state shall allow said agricultural lease to remain in force for the time remaining on the lease agreement; requiring entity managing purchased lands to consider existing agricultural leases in the development of the land management plan; and providing, where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Section 5: Amending s. 373.0361, F.S.; requiring population projections used for determining public water supply needs to be based upon the best available data; requiring water management districts to consider information provided by the University of Florida’s Bureau of Economic and Business Research (BEBR); providing for adjustments and deviations from the BEBR projections to be described and for the presentation of the original BEBR data along with the adjusted data; establishing limitations on the ability of agricultural self-supplied water users to develop alternative water supplies.

Section 6: Amending s. 373.236, F.S.; requiring a water management district to inform agricultural applicants of the ability to request a 20-year consumptive use permit initially or upon renewal.

Section 7: Amending s. 373.407, F.S.; establishing a process by which a water management district will enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in s. 373.406 (2), F.S.

Section 8: Providing an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is unknown whether this bill will require counties or municipalities to take action requiring the expenditure of funds, but does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Committee on Local Government and Veterans' Affairs

- a. This analysis only explains the provisions, and not reasoning or the implications, of the bill.
- b. On March 4, 2003, the Senate Committee on Agriculture adopted four amendments to the companion bill, SB 1712, and reported the bill favorably as a committee substitute. The sponsor may wish to adopt the following substantial conforming changes to this bill:
 - Clarify that the cause of action created for agricultural landowners is available only to the specific landowner whose property has been subjected to rezoning or to a change in density designation.
 - Modify the requirement that agricultural leases must be continued if acquired for conservation or recreation purposes for one year to provide that this time period need not exceed the termination period of the lease if that is a shorter period; require an acquiring agency to use reasonable efforts, rather than every effort, to keep lands in agricultural production and must consider any agricultural lease in developing its management plan.

- Add a provision that limitations on alternative water sources for self-suppliers must be considered in regional water supply plans.
- Require water management districts to inform applicants of the availability of 20-year permits.
- Create a requirement that the Department of Agriculture and Consumer Services (DACS) reach an agreement with a water management district regarding an agricultural related exemption is modified to provide that DACS will conduct a nonbinding review if requested.
- The Florida Association of Counties has expressed the following concerns with the language which recognizes “agricultural enclaves” and provides associated rights:
 - The agricultural enclave language ignores the principles of reasonable investment backed expectation and creates unwarranted privileges for speculative land uses, suggesting that an agricultural landowner is entitled to the density levels of neighboring parcels even though the land was purchased as agricultural land, has been used as such, and has benefited from reduced agricultural classification property taxes.
 - Furthermore, there is no restriction in size and these so called “enclaves” could encompass thousands of acres.
- 1000 Friends of Florida has also expressed opposition to the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

- On March 16, 2004, the Committee on Local Government and Veterans’ Affairs adopted one amendment, without objection, which removed lines 33-42 of the bill:

These lines created a new section to the Bert J. Harris, Jr., Private Property Rights Protection Act. This new section permits any landowner who is “aggrieved by the changing of an existing agricultural land use classification or agricultural zoning or the lowering of the current residential density designation by a county” to have a cause of action when that change creates an inordinate burden on property classified as agricultural land. The cause of action is immediate and is in accordance with the procedures provided by the Bert J. Harris, Jr., Private Property Rights Protection Act, except that the 180-day notice period is reduced to a 60-day notice period.

The bill, as amended, was reported favorably as a committee substitute.

- On March 25, 2004, the Committee on Agriculture adopted a strike-all amendment to HB 1161. This analysis reflects the intent of that strike-all amendment.
- On April 2, 2004, the Subcommittee on Agriculture and Environment Appropriations favorably recommended three amendments described as follows:
 - Revises s. 70.001, F.S., commonly referred to as the “Bert Harris Act”, by changing the current time period from 180 days to 90 days between the filing of a claim and the filing of an action that the government is allowed to make a written settlement.
 - Revises the proposed definition of an “agricultural enclave” to include an area surrounded on at least 75% rather than 80% of its perimeter by industrial, commercial, or residential development.
 - Amends s. 163.3187, F.S., by providing an exception to the number of times during any calendar year certain large scale amendments to comprehensive plans may be approved.