

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 Agricultural Economic Development

SPONSOR(S): Pickens

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	_____	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Agriculture</u>	_____	_____	_____
3) <u>Agriculture & Environment Appropriations</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill recites the value of agricultural production, agricultural lands, agricultural activity, and the agricultural industry.

The bill adds 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.

This bill amends the Growth Policy Act to create a definition of "agricultural enclave." The bill permits the owner or owners of agricultural enclaves to apply for a local government comprehensive plan amendment which includes land uses and intensities of use consistent with the uses and intensities of use of surrounding industrial, commercial, or residential areas. The bill deems that the local government comprehensive plan amendment prevents urban sprawl and is "in compliance" if it is consistent with the applicable statutory sections of the Local Government Comprehensive Planning and Land Development Regulation Act, the state comprehensive plan, the appropriate regional policy plan, and specified administrative rule.

This bill creates a new section within the Land Conservation Act of 1972 to provide that when certain state land purchases have an existing agricultural lease, then the state must allow the lease to remain in full force for the remainder of the lease term up to one year from the purchase date prior to canceling or bidding. The bill also provides for the purchasing entity to make every effort to keep the lands in agricultural production under certain circumstances.

This bill adds a new subsection which provides that an application for renewal of a permit for agricultural uses shall be deemed to have provided reasonable assurances for a 20-year permit under certain circumstances and requires a renewal permit to be issued for a minimum duration of 20 years.

This bill requires the Department of Agriculture and Consumer Services and each water management district to enter into a memorandum of agreement no later than July 1, 2005 requiring a final determination as to whether an existing or proposed activity qualifies for an agricultural-related exemption.

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

STORAGE NAME: h1161.lgv.doc

DATE: March 9, 2004

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:

The bill recites the value of agricultural production, agricultural lands, agricultural activity, and the agricultural industry:

- agricultural production is a major contributor to the economy of the state;
- agricultural lands constitute unique and irreplaceable resources of statewide importance;
- the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and
- the development, improvement, and encouragement of the agricultural industry will result in a general benefit to the health, safety, and welfare of the people of the state

Based on this value, this bill creates a new cause of action under the Bert J. Harris, Jr., Private Property Rights Protection Act, creates “agricultural enclave” with associated benefits as part of the Growth Policy Act, provides for agricultural leases as part of certain state land purchases, and makes changes to Parts II and IV of Chapter 373, Florida Statutes.

Cause of Action Under the Bert J. Harris, Jr., Private Property Rights Protection Act

The bill adds a new section to Chapter 70, Florida Statutes. Chapter 70, Florida Statutes, is the Bert J. Harris, Jr., Private Property Rights Protection Act.

Through Chapter 70, the Legislature has recognized that “some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution.”¹

As a result, the Legislature created a separate and distinct cause of action from the law of takings² that entitles the property owner of real property to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government “when a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property.”³

¹ See Fla. Stat. § 70.001(1) (2003).

² *Id.*

³ See Fla. Stat. § 70.001(2) (2003).

The new section set forth in this bill 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 pursuant to section 193.461, Florida Statutes. The cause of action is immediate and in accordance with the procedures provided in section 70.001, Florida Statutes, except that the 180-day notice period is reduced to a 60-day notice period.

Agricultural Enclaves and the Growth Policy Act

Part II of Chapter 163, Florida Statutes, contains the Growth Policy Act, the Local Government Comprehensive Planning and Land Development Regulation Act, and the Florida Local Government Development Agreement Act. This bill amends the Growth Policy Act to create a definition of “agricultural enclave:”

any undeveloped area utilized for agricultural purposes and surrounded on at least 80 percent of its perimeter by industrial, commercial, or residential development that exists or has been approved by the local government, and where public services, including water, wastewater, transportation, schools, and recreational facilities, are available or are scheduled to be provided as part of an adopted 5-year schedule of capital improvements by the local government or by an alternative public infrastructure provider, including, but not limited to, any improvement district, neighborhood improvement district, community redevelopment district, or community development district.

The bill also amends the Growth Policy Act:

- to permit the owner or owners of agricultural enclaves to apply for an amendment to the local government comprehensive plan pursuant to section 163.3187, Florida Statutes;⁴
- to permit this amendment to include land uses and intensities of use consistent with the uses and intensities of use of surrounding industrial, commercial, or residential areas; and
- to deem the amendment to prevent urban sprawl and in compliance as defined in section 163.3184,⁵ Florida Statutes, if the amendment is consistent with applicable provisions of sections 163.3177,⁶ 163.3178,⁷ 163.3180,⁸ 163.3191,⁹ and 163.3245,¹⁰ Florida Statutes, the state comprehensive plan, the appropriate regional policy plan, and chapter 9J-5, Florida Administrative Code

State Land Purchases and Agricultural Leases

This bill creates a new section within Chapter 259, Florida Statutes, which provides that when lands are purchased pursuant to chapters 259¹¹ or 375,¹² Florida Statutes, and there is an existing agricultural

⁴ See Fla. Stat. § 163.3187 (2003) (provides the process for amending an adopted comprehensive plan).

⁵ See Fla. Stat. § 163.3184(1)(b) (2003) (“in compliance” means consistent with the requirements of sections 163.3177, 163.31776, when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern.”).

⁶ See Fla. Stat. § 163.3177 (2003) (required and optional elements of comprehensive plan; studies and surveys).

⁷ See Fla. Stat. § 163.3178 (2003) (coastal management).

⁸ See Fla. Stat. § 163.3180 (2003) (concurrency).

⁹ See Fla. Stat. § 163.3191 (2003) (evaluation and appraisal of comprehensive plan).

¹⁰ See Fla. Stat. § 163.3245 (2003) (optional sector plans).

¹¹ See Fla. Stat. Ch. 259 (2003) (the Land Conservation Act of 1972 provides for the acquisition of state-owned lands for preservation, conservation, and recreation purposes as well as Florida Preservation 2000 and Florida Forever).

lease, then the state must allow the lease to remain in full force for the remainder of the lease term up to one year from the purchase date prior to canceling or bidding. The bill provides for the purchasing entity to make every effort to keep the lands in agricultural production under certain circumstances.¹³

Changes to Part II of Chapter 373, Florida Statutes

Part II of Chapter 373, Florida Statutes, sets forth the requirements for the permitting of the consumptive uses of water. Section 373.236, Florida Statutes, relates to the duration of permits and permits compliance reports.

Under this section, permits are granted for a period of 20 years if requested for that period of time and if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.¹⁴

This bill adds a new subsection which provides that an application for renewal of a permit for *agricultural uses* shall be deemed to have provided reasonable assurances for a 20-year permit: (1) if the applicant has demonstrated that there have been no adverse consequences during the previous permit period; (2) if the total average daily usage will not increase during the renewal period; and (3) if the permittee intends to use the water supply for agricultural purposes during the renewal period. The bill then requires the governing board or the department to issue a renewal permit for a minimum duration of 20 years.

Changes to Part IV of Chapter 373, Florida Statutes

Part IV of Chapter 373, Florida Statutes, relates to the Management and Storage of Surface Waters. This bill requires the Department of Agriculture and Consumer Services and each water management district to enter into a memorandum of agreement no later than July 1, 2005:

- under the memorandum of agreement, the Department of Agriculture and Consumer Services will issue a final determination as to whether an existing or proposed activity qualifies for an agricultural-related exemption set forth in section 373.406(2), Florida Statutes;
- the memorandum of agreement shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake this review effectively and efficiently and issue a determination;
- the memorandum of agreement will integrate the review and determination of the Department of Agriculture and Consumer Services into the regulatory program administered by a water management district under this part; and
- the memorandum of agreement shall be developed in a public process and adopted by rule by each affected agency.

The bill provides that it should not be construed to diminish the authority of a water management district or the Department of Environmental Protection under Part IV of Chapter 373, Florida Statutes.

C. SECTION DIRECTORY:

The bill provides four WHEREAS clauses.

¹² See Fla. Stat. Ch. 375 (2003) (the Outdoor Recreation and Conservation Act of 1963 provides, in part, for the acquisition and improvement of lands, water areas, and related resources).

¹³ See Fla. HB 1161 § 4 (2003) ("when the lands are in agricultural production at the time of purchase or have been in agricultural production prior to purchase when removal of agricultural production may cause a negative economic impact").

¹⁴ See Fla. Stat. § 373.236(1) (2003)

- Section 1: Creates section 70.005, Florida Statutes.
- Section 2: Adds a new subsection (1) and renumbers subsections (1) and (2) as subsections (2) and (3) in section 163.2514, Florida Statutes.
- Section 3: Adds subsection (7) to section 163.2517, Florida Statutes.
- Section 4: Creates section 259.047, Florida Statutes.
- Section 5. Adds a new subsection (2) and renumbers subsections (2) and (3) as subsections (3) and (4) in of section 373.236, Florida Statutes.
- Section 6: Creates section 373.407, Florida Statutes.
- Section 7: Provides that the act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact on local government revenues is not known.

2. Expenditures:

The fiscal impact on local government expenditures is not known.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The intent of the bill appears to be to have a direct, positive economic impact on the private sector as it relates to agricultural production, agricultural lands, agricultural production, and the agricultural industry.

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:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

Section 6 of the bill relating to memoranda of agreement between the Department of Agriculture and Consumer Services and each water management district must adopted by rule by each affected agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This analysis only explains the provisions, and not reasoning or the implications, of the bill.

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.