

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill 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.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act

Currently, section 70.001, F.S., sets forth the Bert Harris Act. This act 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 the 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.

HB 561 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 90-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 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 defines an “agricultural enclave” and authorizes the owner of such to apply for a comprehensive plan amendment that includes densities and intensities of use consistent with surrounding industrial, commercial, and residential uses. The property must meet Greenbelt criteria as specified in s. 193.461, F.S., and have been in agricultural production for the past five years.

Additionally, the bill provides that if two or more persons own contiguous agricultural lands which, when consolidated after the effective date of this act, meet the definition of an agricultural enclave, such persons shall not be entitled to apply for a comprehensive plan amendment for a period of 5 years following consolidation.

Land Acquisition

Chapter 259, F.S., is entitled “Land Acquisitions for Conservation and Recreation,” and contains Florida’s nationally recognized land acquisition programs:

- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

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. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sales 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 Department of Agriculture and Consumer Services (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 in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning

In 2004, the Legislature enacted ch. 2004-381, Laws of Florida, requiring water management districts 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.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

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 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

The bill establishes a process by which each water management district enters 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 cause of action for aggrieved landowner.

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

Section 3: Amending s. 163.2517, F.S.; authorizing landowner of “agricultural enclave” to apply for an amendment to the local government comprehensive plan; and, providing requirements relating to application for a comprehensive plan amendment.

Section 4: Amending s. 163.3187, F.S.; providing that a large scale comprehensive plan amendment adopted as a result of informal mediation may be approved without regard to the statutory frequency limits.

Section 5: Creating s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 6: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 7: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 8: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 9: Creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

Section 10: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments below.

2. Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable.

D. FISCAL COMMENTS:

The Department reports that this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 9 addresses the development of a memorandum of agreement between the Department and each water management district in which the Department would conduct a review to determine exemption(s) from existing statute. DACS states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It 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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES