

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Agriculture Committee

BILL: SB 716

SPONSOR: Senator Argenziano

SUBJECT: Agricultural Economic Development

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>EP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill gives an agricultural landowner an immediate cause of action under s. 70.001, F.S. (the Bert J. Harris Private Property Rights Protection Act, hereafter referred to as the Bert Harris Act) if his land has been inordinately burdened due to a change in zoning or residential density, with the time period between the filing of a claim and the filing of an action being reduced to 90 days from 180 days. It establishes an “agricultural enclave” classification and provides that owners of such land may apply to amend the local government comprehensive plan and be entitled to uses and intensities consistent with the surrounding industrial, commercial, or residential areas if the amendment otherwise complies with applicable local, state, or regional plans. The bill imposes a five year delay before an amendment can be filed by two or more contiguous landowners who have consolidated their land so that it becomes an agricultural enclave. The bill exempts a large scale comprehensive plan amendment adopted as a result of informal mediation from the statutory frequency limits on amendments. The bill authorizes the continuance of an agricultural lease to the end of its term when it exists on land purchased by a state entity for conservation or recreation purposes. It also requires that reasonable efforts be made to continue the lands in agriculture production and that the acquiring agencies consider existing agriculture leases in the development of its management plan. The bill requires regional water supply plans to recognize that alternative sources of water to agricultural self-suppliers are limited and it also requires a Water Management District (WMD) to inform an applicant for renewal of an agricultural water use permit that 20-year permits are available. The bill requires the Department of Agriculture and Consumer Services (DACCS) and a WMD to enter into a Memorandum of Agreement regarding the processing of exemptions for agriculture water usage.

This bill substantially amends the following sections of the Florida Statutes 163.2514, 163.2517, 163.3187, 373.0361, and 373.236; and it creates the following sections of the Florida Statutes: 70.005, 259.047, and 373.407.

II. Present Situation:

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 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.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use 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. Florida statutes permit a special designation for urban infill and redevelopment area and the Act has favorable provisions for areas so designated, but there is no similar designation of property as an "agricultural enclave" or any special provisions pertaining to such an area. A comprehensive plan amendment resulting from a compliance agreement pursuant to s. 163.3184(16), F.S., is exempt from the statutory limits on the frequency of adoption of amendments but a large scale comprehensive plan amendment resulting from informal mediation in accordance with s. 163.3181(4), F.S., is not accorded a similar exemption.

Chapter 259, F.S.

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation or Recreation", and contains these land acquisition programs: The Conservation and Recreation Lands program (CARL), the Florida 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. The CARL program was replaced by the P2000 in 1990 and the Florida Forever program in 1999. 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 agriculture 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. Currently there are no specific statutory provisions dealing with agricultural leases on land acquired under these land acquisition programs.

Consumptive Use Permits (CUPs)

Water use permits can be issued to non-government individuals or entities for a period 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. Section 373.406 (2), F.S., contains an exemption from the requirements for managing and storing surface waters which permits agriculture users to alter the topography of their land. Presently, there is no requirement that this exemption be the subject of an agreement between DACS and the respective Water Management District.

Regional Water Supply Planning

In 1997, the Legislature enacted chapter 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. There is no requirement that the list of options take into consideration the limited sources available to agricultural self-suppliers.

III. Effect of Proposed Changes:

Section 1. Creates s. 70.005, F.S., to provide that the 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. Reduces from 180 days to 90 days the notice period required by s. 70.001, F.S., before filing an action.

Section 2. Amends s. 163.2514, F.S., Growth Policy Act definitions, to define "agricultural enclave" as an unincorporated, undeveloped parcel of 7,500 acres or less, owned by a single person or entity, which satisfies all of the following criteria:

- The parcel has been in continuous use for bona fide agricultural purposes for a five year period prior to filing an application to amend a comprehensive plan;
- The parcel is surrounded on at least 75 percent of its perimeter by industrial, commercial, or residential development or property that may be developed for such purposes without a comprehensive plan amendment.
- Public services, including water, wastewater, transportation, schools, and recreational facilities, are available or scheduled to be provided as part of an adopted 5-year schedule of capital improvements by the local government.

Section 3. Amends s. 163.2517, F.S., to permit the owner of an agricultural enclave to apply for an amendment to the local government comprehensive plan, which amendment may include land uses and intensities consistent with the surrounding industrial, commercial, or residential areas. Requires the amendment application to include appropriate "new urban" concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer

of development rights in order to discourage urban sprawl. Provides that such amendment shall be deemed to prevent urban sprawl and be in compliance with s. 163.3184, F.S., if it is consistent with other applicable local, state, or regional planning ordinances or plans, and chapter 9J-5, Florida Administrative Code. Provides that owners who, after consolidation of contiguous agricultural lands, would be entitled to apply for a comprehensive plan amendment, must wait five years from the time of consolidation to file a plan amendment.

Section 4. Amends s. 163.3187, F.S., to allow adoption of any large scale comprehensive plan amendment resulting from informal mediation pursuant to s. 163.3181(4), F.S., without regard to statutory frequency limits.

Section 5. Creates s. 259.047, F.S., to authorize the continuance of a lease to the end of the lease agreement when lands with an existing agriculture lease are purchased pursuant to chapters 259 or 375, F.S. Requires an entity managing lands acquired pursuant to chapter 259, F.S., to consider any existing agriculture lease in the development of its land management plan. Provides that where consistent with the purpose for which the lands were purchased, a purchasing entity must make reasonable efforts to keep lands in agricultural production.

Section 6. Amends s. 373.0361, F.S., to require that a regional water supply plan contain provisions that recognize that alternative water source options for agricultural self-suppliers are limited.

Section 7. Amends a statutory reference in s. 373.2234, F.S.

Section 8. Amends s. 373.236, F.S., to require water management districts to inform agricultural applicants of the availability of a 20-year consumptive use permit.

Section 9. Creates s. 373.407, F.S., requiring the Department of Agriculture and Consumer Services (DACS) and each water management district to enter into a Memorandum of Agreement (MOA) by July 1, 2006 under which DACS will assist in determining whether an activity qualifies for an agricultural related exemption set forth in s. 373.406(2), F.S. The MOA must include:

- a process whereby DACS, at the request of a district, shall conduct a nonbinding review.
- processes and procedures to be followed by DACS in its review and issuance of a determination.

Section 10. Provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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