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: Community Affairs Committee

BILL:	CS/SB 716
SPONSOR:	Community Affairs Committee, Senators Argenziano and Haridopolos
SUBJECT:	Agricultural Economic Development
DATE:	March 22, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	**Favorable**
2.	Herrin	Yeatman	CA	**Fav/CS**
3.			EP	
4.				
5.				
6.				

I. Summary:

This committee substitute (CS) provides that a change in land use classification or agricultural zoning or the lowering of the residential density designation on agricultural land, as classified under s. 193.461, F.S., creates an inordinate burden and gives the aggrieved landowner a cause of action under s. 70.001, F.S., the Bert Harris Act . It also reduces the required notice period for such an action from 180 days to 90 days.

It establishes an “agricultural enclave” classification for an unincorporated, undeveloped parcel owned by a single individual or entity that does not exceed 2,560 acres and meets certain criteria. There is an exception for an agricultural enclave if a damaging pest, disease, or natural disaster is identified within 5 miles of the enclave that allows the enclave to include up to 5,120 acres. It also creates a classification for “family farm agricultural enclave.”

The CS provides that the owner of an agricultural enclave may apply for a plan amendment or development of regional impact, if applicable, to include 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 owner of a family farm agricultural enclave may also apply for a similar plan amendment. If the local government fails to act on such amendment within 180 days, the plan amendment or application for development of regional impact shall be granted or receive approval.

Under this CS, a landowner may apply to the Department of Community Affairs (DCA) to designate a rural land stewardship area. The minimum size for a rural land stewardship area is reduced from 10,000 acres to 2,500 acres. It requires a written agreement between DCA and the landowner to designate such an area.

In addition, the CS exempts plan amendments relating to agricultural enclaves and family farm agricultural enclaves and large-scale plan amendments adopted as a result of informal mediation from the limitation on the frequency of plan amendments. The CS 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 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. Also, a purchasing entity must make reasonable efforts to keep lands in agricultural production if the land is in agriculture at the time of acquisition and that use is consistent with the purposes for which the property was purchased.

Finally, the CS 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 CS requires the Department of Agriculture and Consumer Services (DACS) and a WMD to enter into a Memorandum of Agreement regarding the processing of exemptions for agriculture water usage.

This CS substantially amends the following sections of the Florida Statutes: 70.001, 163.2514, 163.2517, 163.3187, 373.0361, and 373.236; and creates sections 259.047 and 373.407.

II. Present Situation:

Bert Harris Act

Section 70.001, F.S., the Bert J. Harris, Jr., Private Property Rights Protection Act, was enacted by the Legislature in 1995[1] to provide a new cause of action for private property owners whose property has been Ainordinately burdened@ by state and local government action that may not rise to the level of a "taking" under the State or Federal Constitution.[2] The inordinate burden applies either to an existing use of real property or a vested right to a specific use, as determined by application of the rules of equitable estoppel.[3] Under s. 70.001(4)(a), F.S., a property owner seeking compensation must present, within one year of the governmental action, a written claim to the head of the governmental agency whose action caused the inordinate burden, along with a valid appraisal that shows the loss of the fair market value.

The governmental entity then has 180 days to make a written settlement offer that may include:

- An adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of on-site mitigation;
- Location of the least sensitive portion of the property;

[1] Ch. 95-181, s. 1, Laws of Fla.
[2] Section 70.001(1) and (9), Fla. Stat. (2002).
[3] Section 70.001(2)-(3)(a), Fla. Stat. (2002).

- Conditioning the amount of development permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Issuance of the development order, a variance, special exception, or other extraordinary relief;
- Purchase of the real property, or an interest therein, by an appropriate governmental agency; or
- No changes to the action of the governmental entity.[4]

If the property owner accepts the settlement offer, then the government implements it pursuant to s. 70.001(4)(c), F.S. If the settlement offer is declined, the government must issue within the 180 day period a written ripeness decision, which must contain identification of allowable uses on the affected land. This ripeness decision serves as the last prerequisite to judicial review, thus allowing the landowner to file a claim in circuit court pursuant to s. 70.001(5)(a)-(b), F.S.

Under s. 70.001(6)(a), F.S., the court decides if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property. Private property is inordinately burdened when a government action has directly restricted or limited the use of the property so that the owner is unable to attain reasonable, investment-backed expectations for the existing use, or a vested right in the existing use, of the property as a whole. Alternatively, property is inordinately burdened if the owner is left with existing or vested uses which are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good which should be borne by the public at large.[5]

If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved. The court then impanels a jury to decide the monetary value, pursuant to s. 70.001(6)(b), F.S., based upon the loss in fair market value attributable to the governmental action. The prevailing party is entitled to reasonable costs and attorney's fees, pursuant to s. 70.001(6)(c), F.S., if the losing party did not make, or rejected, a bona fide settlement offer.

Growth Management Act

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 an 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

[4] Section 70.001(4), Fla. Stat. (2002).
[5] Section 70.001(2)(e), Fla. Stat. (2002).

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., relating to "Land Acquisitions for Conservation or Recreation," governs the following 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.

Rural and Family Lands Protection Act
Florida has a statutory program intended, in part, to protect agricultural lands. The Rural and Family Lands Protection Act (Act), ss. 570.70 and 570.71, F.S., was enacted in 2001 to bring under public protection lands that serve to limit subdivision and conversion of agricultural and natural areas that provide economic, open space, water, and wildlife benefits by acquiring land or related interests in land such as perpetual, less-than-fee acquisitions, agricultural protection agreements, and resource conservation agreements and innovative planning and development strategies in rural areas.

Section 570.71, F.S., authorizes the DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to acquire perpetual, less-than-fee interests in land, to enter into agricultural protection agreements, and to enter into resource conservation agreements for the following public purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or
- Protection of agricultural lands threatened by conversion to other uses.

As part of the agricultural protection agreement, the parties must agree that the state will have a right to buy a conservation easement or rural land protection easement at the end of the 30-year term. The landowner may transfer or sell the property before the expiration of the 30-year term, but only if the property is sold subject to the agreement and the buyer becomes the successor in interest to the agricultural protection agreement. Upon mutual consent of the parties, a landowner

may enter into a perpetual easement at any time during the term of an agricultural protection agreement. Landowners entering into an agricultural protection agreement may receive up to 50 percent of the purchase price at the time the agreement is entered into, and remaining payments on the balance will be equal annual payments over the term of the agreement.

Although no funds were made available to implement the Act, the department is authorized to use any funding made available by the state, federal government, other governmental entities, nongovernmental organizations, and private individuals. Not more than 10 percent of any funds made available to implement this act shall be expended for resource conservation agreements and agricultural protection agreements.

Rural Land Stewardship Areas

Florida also has a statutory program to protect agricultural lands through the use of transferable rural land use credits. Section 163.3177(11), F.S., provides for the establishment of rural land stewardship areas. This program encourages land use efficiencies within existing urban areas and allows for the conversion of rural lands to other uses, where appropriate and consistent with the affected local comprehensive plan, through the use of innovative planning and development strategies. Such strategies may include urban villages, new towns, satellite communities, clustering and open space provisions, mixed-use development and sector planning.[6] The rural land stewardship area designation is intended to further the broad principles of rural sustainability, including:

- Restoration and maintenance of the economic value associated with rural lands;
- Control of urban sprawl;
- Identification and protection of ecosystems, habitats, and natural resources;
- Promotion of rural economic activity;
- Maintenance of the vitality of Florida's agricultural economy; and
- Protection of the character of Florida's rural areas.[7]

A local government may apply to DCA in writing to request consideration for authorization to designate a rural land stewardship area. Such area may not be less than 10,000 acres. The designated area must be located outside of a municipality and established urban growth boundaries.[8] The plan amendment designating the rural land stewardship area must include criteria for the creation of a receiving area within the stewardship area. At a minimum, these criteria must include the adequacy of suitable land for development that avoids conflict with environmentally sensitive land, compatibility between the transition of uses from higher density to lower intensity rural uses, and receiving area service boundaries which separate receiving areas from other land uses within the stewardship area.[9]

Following the adoption of a plan amendment that creates a rural land stewardship area, a local government, by ordinance, is required to assign credits to the area known as "transferable rural land use credits." These credits may only be used on lands designated as receiving areas and

[6] Section 163.3177(11)(b), F.S.
[7] Section 163.3177(11)(d)2., F.S.
[8] Section 163.3177(11)(d)6., F.S.
[9] Section 163.3177(11)(d)6., F.S.

solely for the purpose of implementing innovative planning and development strategies. The underlying density assigned to a parcel ceases to exist once it is transferred to a receiving area or the underlying density to the parcel is utilized. The use or conveyance of these credits must be recorded in the county records where the property is located as a covenant or restrictive easement running with the land in favor of the county, a resource agency, or a recognized statewide land trust. Land may be withdrawn from a rural land stewardship area through a plan amendment.[10]

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.

III. Effect of Proposed Changes:

Section 1 amends s. 70.001, F.S., to provide that a change in land use classification or agricultural zoning or the lowering of the residential density designation on agricultural land, as classified under s. 193.461, F.S.,[11] creates an inordinate burden and gives the aggrieved landowner a cause of action under the Bert Harris Act. It also reduces the required notice period for such an action from 180 days to 90 days.

Section 2 amends s. 163.2514, F.S., to define "agricultural enclave" as an unincorporated, undeveloped parcel owned by a single person or entity, which satisfies all of the following criteria:

- The enclave does not exceed for sections or 2,560 acres. However, an enclave that is in active agricultural production and a damaging pest, disease, or natural disaster is or has been identified within 5 miles of the property may not exceed eight sections or 5,120 acres.

[10] Section 163.3177(11)(d)6., F.S.
[11] Section 193.461, F.S., relates to the property appraiser's classification of lands within a county as agricultural or nonagricultural for assessment purposes.

- The parcel has been in continuous use for bona fide agricultural purposes for five years 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 or an alternative local government, public infrastructure provider.

It also defines "family farm agricultural enclave" as an undeveloped parcel not exceeding 500 acres which meets all of the above criteria.

Section 3 amends s. 163.2517, F.S., relating to the designation of an urban infill and redevelopment area, to permit the owner of an agricultural enclave to apply for an amendment to the local government comprehensive plan and a development of regional impact, if applicable. This plan amendment may include land uses and intensities consistent with surrounding industrial, commercial, or residential areas. It requires any such plan amendment application to include appropriate "new urbanism" 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. It 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 the state comprehensive plan, applicable regional policy plan, and ch. 9J-5, Florida Administrative Code. In addition, it provides that owners who, after consolidation of contiguous agricultural lands, would be entitled to apply for a comprehensive plan amendment under the provisions of this CS, must wait five years from the time of consolidation to apply for a plan amendment.

The owner of a "family farm agricultural enclave" may also apply for a plan amendment that may include land uses and intensities consistent with surrounding industrial, commercial, or residential areas. This amendment application does not have to include the new urbanism concepts that are required for the larger agricultural enclaves.

This CS provides that a plan amendment or application for a development of regional impact relating to an agricultural enclave or family farm agricultural enclave on which the local government fails to act within 180 days shall be granted or receive approval.

Section 4 amends s. 163.3177, F.S., to require a local government to delineate agricultural enclaves in its future land use plan and establish appropriate land uses in the enclaves which are consistent with the intensities of use of surrounding industrial, commercial, and residential uses.

The CS authorizes landowners, in addition to local governments, to designate certain lands as a rural land stewardship area under a process established by the DCA. It reduces the minimum size for a rural land stewardship area from 10,000 acres to 2,500 acres. Before selecting a landowner, DCA must enter into a written agreement to ensure the landowner intends to designate a rural land stewardship area and has the financial and administrative capabilities to implement such an area.

Section 5 amends s. 163.3187, F.S., to exempt plan amendments relating to an agricultural enclave or family farm agricultural enclave and large scale plan amendments resulting from informal mediation pursuant to s. 163.3181(4), F.S., from the twice-per-year limitation on amendments.

Section 6 creates s. 259.047, F.S., to authorize the continuance of a lease when lands with an existing agriculture lease are purchased pursuant to chapters 259 or 375, F.S. It 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. Also, it 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 if the land was being used for that purpose at the time of acquisition.

Section 7 amends s. 373.0361(2)(a)2., F.S., to require that the list of water source options in the water supply development component of a regional water supply plan contain provisions recognizing that alternative water source options for agricultural self-suppliers are limited.

Section 8 amends s. 373.2234, F.S., to conform a statutory reference.

Section 9 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 in the application form.

Section 10 creates s. 373.407, F.S., to require DACS and each water management district to enter into a Memorandum of Agreement (MOA) by July 1, 2006, under which DACS will assist the district 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 on whether a proposed activity qualifies for an agricultural related exemption.
- processes and procedures to be followed by DACS in its review and issuance of a recommendation to the district.

Section 11 provides that this act shall take effect upon becoming a 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:

The CS provides an exemption from the twice-per-year limitation on plan amendments relating to agricultural enclaves and family farm agricultural enclaves and large-scale plan amendments that are the result of informal mediation. The DCA may incur some additional costs associated with publishing notices of intent when reviewing these plan amendments.

VI. Technical Deficiencies:

Page 3, line 3, refers to a "landowner" which is inconsistent with the term "property owner" as defined in the Bert Harris Act.

Page 8, lines 23-28, do not specify what "to act" means and, therefore, it is unclear what constitutes a failure to act. Also, this paragraph (c) does not state when the 180-day period begins.

Page 15, line 24, refers to "selecting a landowner" but the CS does not establish a selection process. Instead, it authorizes a landowner to seek designation as a rural land stewardship area for a parcel by applying to DCA. Also, the phrase "and clarify that the rural land stewardship area is intended" on page 15, lines 28-29, is redundant with the rest of the sentence.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.