

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

COMMITTEE SUBSTITUTE: CS/SB 1880

INTRODUCER: Agriculture Committee and Senator Argenziano

SUBJECT: Agricultural Economic Development

DATE: March 21, 2006

REVISED: _____

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

I. Summary:

This committee substitute reduces the notice period from 180 days to 90 days before an agricultural property owner can pursue a cause of action against a governmental entity for compensation arising out of action that has created an inordinate burden on the agricultural property.

It establishes procedures for an owner of an agricultural enclave to amend a local government comprehensive plan to obtain uses and intensities consistent with that of the surrounding industrial, commercial, or residential areas without being subject to an urban sprawl review. This will not affect any protection currently existing for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area.

“Agricultural enclave” is defined.

The committee substitute provides that a lease may be continued to the end of the lease period when land is acquired for conservation or recreation purposes with an existing agricultural lease. It also requires that an entity managing such lands must consider such leases in the development of its land management plan and further requires the purchasing entity to make reasonable efforts to keep such lands in agricultural production if that was its use at the time of acquisition.

The committee substitute 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 an agricultural water use permit that 20-year permits are available. Finally, it 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 agricultural water usage.

This committee substitute substantially amends the following sections of the Florida Statutes: 70.001, 163.3162, 163.3164, 373.0361, and 373.236; and creates sections 259.047 and 373.407.

II. Present Situation:

Bert Harris Act

Since 1995, section 70.001, F.S., the Bert J. Harris, Jr., Private Property Rights Protection Act (Bert Harris Act), has provided a cause of action for private property owners whose property has been inordinately burdened by state and local government action that may not amount to a “taking” under the State or Federal Constitution. The inordinate burden applies to an existing use of real property or a vested right to a specific use of real property. A cause of action is initiated by the filing of a written claim within one year of the governmental action with the head of the governmental entity whose action caused the inordinate burden, along with a valid appraisal that shows the loss of the fair market value. During a 180 day period after the filing of a claim, the governmental entity must make a written settlement offer to the property owner.

If the property owner accepts the settlement offer, the governmental entity must take steps necessary to implement it. If the settlement offer is not accepted, the government must issue within the 180 day period a written ripeness decision, which identifies allowable uses on the affected land. If the property owner rejects the settlement offer and the ripeness decision, the landowner may file a claim in circuit court for compensation pursuant to the Bert Harris Act.

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 a 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 163.3162, F.S., (Agricultural Lands and Practices Act) is a subsection of the Act that prohibits duplicate regulations that might limit activity on a bona fide farm operation but it does not contain any specific provisions which might facilitate a farm landowner in applying for an amendment to the local government comprehensive plan.

Section 163.3164, F.S., contains definitions for terms used in the Act but there is no definition for an “agricultural enclave.”

Chapter 259, F.S. (Land Acquisitions for Conservation or Recreation)

Chapter 259, F.S., 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.

The entity acquiring lands pursuant to Chapter 259, F.S., is not required to consider any existing agriculture lease or the continuance of agricultural production.

Regional Water Supply Planning

Section 373.0361, F.S., directs each WMD to conduct water supply planning for each water supply planning region identified in a district water supply 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 water supply plan recognize that water source options for agricultural self-suppliers are limited.

Consumptive Use Permits (CUPs)

Pursuant to s. 373.236, F.S., 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 this applies to 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 WMD.

III. Effect of Proposed Changes:

Section 1 amends s. 70.001, F.S., to reduce from 180 days to 90 days the notice periods for steps to be taken in pursuit of a cause of action under the Bert Harris Act if the property is classified as agricultural pursuant to s. 193.461, F.S.

Section 2 amends s. 163.3162, F.S., Agricultural Lands and Practices Act, to allow the owner of an "agricultural enclave" to amend the local government comprehensive plan if the parcel of land is less than 2,560 acres, without being subject to an urban sprawl review under 9J- 5.006(5), Florida Administrative Code, by either the local or state planning agencies, unless the owner fails

to negotiate in good faith. Such amendment may include land uses and intensities consistent with that of industrial, commercial, or residential areas surrounding the parcel. The local government and the land owner have 180 days to comply with certain requirements and to negotiate in good-faith on land uses and intensities. At the end of this 180 day period, the amendment must be transmitted at the first available transmittal cycle to the state land planning agency for review regardless of whether a consensus has been reached on uses and intensities.

This committee substitute shall not preempt or replace any protection provided to the Wekiva Study Area described in s. 369.316, F.S., or the Everglades Protection Area defined in s.373.4592 (2), F.S.

Section 3 amends s. 163.3164, F.S., to add a definition for "agricultural enclave" which is an unincorporated, undeveloped parcel that

- is owned by a single person or entity;
- 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 has been designated for such purposes in the local government's comprehensive plan;
- has public services, including water, wastewater, transportation, schools, and recreational facilities available or scheduled to be provided consistent with the concurrency provisions of s. 163.3180, F.S., by the local government or an alternative provider of local government infrastructure;
- and does not exceed 2,560 acres except that the parcel size may increase to 5,120 acres if the property has been determined to be urban or suburban by the state land planning agency.

Section 4 creates s. 259.047, F.S., to authorize the continuance of a lease to the end of the lease period 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 5 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 6 amends s. 373.2234, F.S., to conform a statutory reference.

Section 7 amends s. 373.236, F.S., to require WMDs to inform agricultural applicants of the availability of a 20-year consumptive use permit in the application form, whether for an initial permit or a renewal.

Section 8 creates s. 373.407, F.S., to require DACS and each WMD to enter into a memorandum of agreement (MOA) by July 1, 2007, 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 WMD, shall conduct a nonbinding review as to 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 WMD.

Section 9 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:

The reduction of the time period for the filing of a Bert Harris cause of action and the removal of urban sprawl as a criteria used in reviewing a comprehensive land plan for an agricultural enclave should result in some efficiencies to proceedings by certain agriculture landowners but the amount of any financial impact would be speculative.

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 introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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