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: Environmental Preservation Committee

Bill: CS/CS/CS/SB 1880

INTRODUCER: Environmental Preservation Committee, Community Affairs Committee, Agriculture Committee, and Senator Argenziano

SUBJECT: Agricultural Economic Development

DATE: April 18, 2006 REVISED: 04/22/06

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

I. Summary:

The committee substitute for committee substitute for committee substitute (CS) reduces the notice period from 180 days to 90 days before an agricultural property owner can pursue a cause of action under the Bert Harris Act. 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. The CS requires a proposed plan amendment for an agricultural enclave that is larger than 640 acres to include appropriate new urbanism concepts. It also prohibits the Department of Community Affairs (DCA) from reviewing the proposed plan amendment for urban sprawl. This CS does not affect any protection currently existing for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area.

This CS defines the term "agricultural enclave" as an undeveloped parcel that is owned by a single person or entity; has been in continuous use for bona fide agricultural purposes for the preceding five years before the proposed plan amendment; 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; and has public services available or scheduled in the capital improvements element to be provided by the local government or an alternative provider of local government infrastructure consistent with the provisions of s. 163.3180, F.S.; and does not exceed 1,280 acres, except that the parcel size may increase to 5,120 acres if the property meets a certain density requirement.

It provides that when land with an existing agricultural lease is acquired in fee simple for conservation purposes, the existing use may continue until the lease expires. Agencies

developing land management plans must consider existing agricultural leases in the development of that plan. Also, the state and other entities that acquire lands in agricultural production are required to make reasonable efforts to keep that land in production at the time of acquisition.

The CS requires that the list of water supply project options contained in a regional water supply plan recognize that alternative water supply options for agricultural self-suppliers are limited, and directs the water management districts (WMDs) to inform an agricultural landowner applying for a consumptive use permit or a renewal, that he or she may be eligible for a 20-year permit or renewal. Finally, it requires the Department of Agriculture and Consumer Services (DACS) and each water management district to enter into a Memorandum of Agreement which authorizes DACS to conduct a non-binding review of agricultural-related permit exemptions and provide recommendations on the review to the appropriate water management district.

This CS substantially amends the following sections of the Florida Statutes: 70.001, 163.3162, 163.3164, 373.0361, 373.2234, 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 term "inordinate burden" means the property owner is "unable to attain the reasonable, investment-backed expectation for the existing use of the real property … or the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public …"[1] 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 in 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. The local government's written settlement offer must result in:

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

[1] Section 70.001(3)(e), F.S.

- No changes to the action of the governmental entity.[2]

If the property owner accepts the settlement offer, the governmental entity must take steps necessary to implement it.[3] 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.[4] Also, the failure of the local government to issue a written ripeness decision following the rejection of its settlement offer shall be deemed to ripen the action for purposes of a judicial review.[5] 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.[6]

Growth Management Act - The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (AAct@), 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 element; 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. Under the Act, the Department of Community Affairs adopted by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

A local government's future land use map provides for the distribution, location, and extent of various land uses, including, but not limited to, residential, commercial, industrial, agricultural, recreational, and conservation uses. Plan amendments are reviewed by the state land planning agency for compliance with the provisions of part II of chapter 163. Part of the state land planning agency's review under rule 9J-5.006 of the Florida Administrative Code, relating to the future land use element, is whether a plan amendment discourages the proliferation of urban sprawl. In order to make this determination, a plan amendment is evaluated by DCA to determine if it:

- Promotes, allows, or designates for development substantial areas as low-intensity, low-density, or single-use development.
- Promotes, allows, or designates significant amounts of urban development in rural areas at substantial distances from urban services while leaping over undeveloped lands which are available and suitable for development.
- Promotes, allows, or designates urban development in radial, strip, isolated or ribbon patterns that emanate from existing urban developments.

[2] Section 70.001(4)(c), F.S.
[3] Section 70.001(4)(c)-(d), F.S.
[4] Section 70.001(5)(a), F.S.
[5] Section 70.001(5)(a), F.S.
[6] Section 70.001(5)(b), F.S.

- As a result of premature or poorly planned conversion of rural uses, fails to adequately protect and conserve natural resources.
- Fails to adequately protect adjacent agricultural areas and activities.
- Fails to maximize use of existing and future public facilities and services.
- Allows for land use patterns or timing that disproportionately increases the cost in time, money and energy, of providing and maintaining services and facilities.
- Fails to provide a clear separation between rural and urban uses.
- Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.
- Fails to encourage an attractive and functional mix of uses.
- Results in poor accessibility among linked or related uses.
- Results in the loss of significant amounts of functional open space.[7]

A local comprehensive plan must be reviewed in its entirety to make this determination. Subsequent plan amendments are reviewed individually to determine their impact on the remainder of the local plan.[8]

Chapter 259, F.S. (Land Acquisitions for Conservation or Recreation)
Chapter 259, F.S., governs the Florida Forever program, the successor program to the Conservation and Recreation Lands Program (CARL), and the Preservation 2000 (P2000) 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 program in 1990, and the Florida Forever program was created to succeed the P2000 program in 1999. Until the P2000 program was established, the title to lands purchased under the state's acquisition programs mostly 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 where in the private landowner retains in interest in the property and can keep using it for its current purposes. However, agencies acquiring fee simple interest in property are not required to consider any existing agriculture lease or the continuance of agricultural production on that lands.

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,

[7] Rule 9J-5.006(5)(g), Fla. Admin. Code.
[8] Rule 9J-5.006(5)(h), Fla. Admin. Code.

a list of water supply development project options, including traditional and alternative water project options, the estimated amount of water which will be made available by a project, and the costs of and potential source of funding for those options. There is no requirement that the water supply development project options list recognize that water project 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 period under the Bert Harris Act for a governmental entity to negotiate with a property owner before the property owner may file an action seeking damages in circuit court if the property is classified as agricultural pursuant to s. 193.461, F.S.

Section 2 amends s. 163.3162, F.S., the Agricultural Lands and Practices Act, to allow the owner of an “agricultural enclave” to submit a plan amendment to the local government without being subject to an urban sprawl review under rule 9J- 5.006(5), Florida Administrative Code. Such amendment may include land uses and intensities consistent with that of industrial, commercial, or residential areas surrounding the parcel. A proposed amendment for a parcel that is larger than 640 acres must include new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights.

Within 30 days after receipt of a complete application, the local government and property owner must agree in writing to a schedule for submitting information, holding public hearings, and taking final action on the proposed amendment. The local government and the land owner shall negotiate in good faith and conclude their negotiations within 180 days. 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 the land uses and intensities. The DCA is prohibited from reviewing the plan amendment for indications of urban sprawl using rule 9J-5.006(5), Florida Administrative Code. However, the land owner loses the exemption from urban sprawl review if the owner fails to negotiate in good faith.

This CS does 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;
- 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, future land use map, and zoning map;
- has public services, including water, wastewater, transportation, schools, and recreational facilities available or scheduled in the capital improvements element 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 1,280 acres, except that the parcel size may increase to 5,120 acres if the property has been determined to be urban because it has existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile.[9]

Section 4 creates s. 259.047, F.S., to provide that when land with an existing agricultural lease is acquired in fee simple for conservation purposes, the existing use may continue until the lease expires. Agencies developing land management plans must consider existing agricultural leases in the development of that plan. Where consistent with the purposes for which the property was acquired, the state and other entities that acquire lands in agricultural production for conservation purposes are required to make reasonable efforts to keep that land in production at the time of the acquisition.

Section 5 amends s. 373.0361(2)(a)2, F.S., to require that the water supply development project option list in the water supply development component of a regional water supply plan contain provisions recognizing that alternative water supply project options for agricultural self-suppliers are limited.

Section 6 amends s. 373.2234, F.S., to correct a cross-reference.

Section 7 amends s. 373.236, F.S., to require that the water management districts must 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 may assist the districts by reviewing applications for permit exemptions to make a nonbinding determination if the activity in the application qualifies for an agricultural related exemption under s. 373.406(2), F.S. The MOA must include processes and procedures to be followed by DACS in its review and issuance of a non-binding recommendation to the WMD.

Section 9 provides the act shall take effect upon becoming a law.

[9] According to the *Florida Statistical Abstract 2005*, the average size of a farm in Florida in 2002 was 236 acres. The agricultural census is on a 5-year cycle and data is collected for years ending in 2 or 7. *See Florida Statistical Abstract 2005*, Bureau of Economic and Business Research, Warrington College of Business, University of Florida, Table 9.35, pgs. 333-34.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

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 plan amendment 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.

VIII. Summary of Amendments:

None.