

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/SB 2246

INTRODUCER: General Government Appropriations and Senator Baker

SUBJECT: Land Development Regulation

DATE: April 15, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill clarifies a criterion of the Agricultural Lands and Practices Act¹ by specifying that local governments cannot restrict land uses surrounding an agricultural enclave that are consistent with the average uses within 3 miles of the perimeter of the parcel. It provides that a landowner can seek relief through the judicial system after presenting a claim to the local government pursuant to s. 70.001(4)(a), F.S., if local governments impose development conditions that prevent the landowner from achieving uses that are consistent with the average intensity of the surrounding area.

It requires the agriculture enclave owner to respond to objections, recommendations, or comments of the state land planning agency. If the land owner satisfies the state land planning agency, the bill permits the land owner to seek relief from the court if the local government then denies or fails to take action within a set time period.

¹ Section 163.3162, F.S.

The bill provides that an agricultural enclave shall not be subject to higher concurrency standards than the concurrency standards applied to development within 3 miles of the perimeter of the enclave and it amends the definition of an agriculture enclave to reflect this.

The bill provides that an applicant who has filed for a comprehensive plan amendment before December 31, 2007 need not comply with a subsequently adopted sector plan.

This bill substantially amends the following sections of the Florida Statutes: 163.3162, 163.3245, and 163.3164.

II. Present Situation:

The Agricultural Lands and Practices Act² limits the discretion of local governments regarding land uses, densities, and intensities of land classified as an agricultural enclave. It establishes procedures for an owner of an agricultural enclave to seek to amend a local comprehensive land plan to obtain uses and intensities consistent with that of the surrounding area but it does not clarify what is meant by the term “surrounding area” and it does not prohibit the local government from imposing development conditions in some circumstances. The definition of an agriculture enclave has language that requires consistency with applicable concurrency provisions.

As part of their comprehensive land plan, a combination of local governments can adopt an optional sector plan that affects more than one county. Presently, local governments are not allowed to issue any permits or approvals that are not consistent with such a sector area plan.

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 certain circumstances that do not amount to taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to provide that a local government may not prohibit an agriculture enclave landowner from obtaining land uses, densities, and intensities consistent with the average density or intensity of uses within 3 miles of the perimeter of the parcel notwithstanding the provisions of a local comprehensive plan. It provides that if a local government imposes development conditions that prevent an enclave landowner from achieving such densities and intensities of use, it shall be presumed to impose an inordinate burden, subject to rebuttal by clear and convincing evidence, and the land owner may apply to the circuit court for relief under the Private Property Rights Protection Act³ (Bert Harris Act), after presenting a claim to the local government pursuant to s. 70.001(4)(a), F.S.

It requires an agriculture enclave landowner, rather than local governments, to respond to objections, recommendations, or comments, if any, resulting from review by the state land

² Id.

³ Section 70.001, F.S.

planning agency. Subsequent to that, a land owner may seek relief under the Bert Harris Act if the local government denies or fails to approve a land owner's amendment to the comprehensive plan after presenting a claim to the local government pursuant to s. 70.001(4)(a), F.S. A plan amendment that has gone through the review process of the state land planning agency is presumed to be consistent with the provisions of the urban sprawl review⁴, subject to rebuttal by clear and convincing evidence.

The bill provides that an agricultural enclave shall not be subjected to higher concurrency standards than the concurrency standards applied to previously approved development within 3 miles of the perimeter of the enclave.

Section 2 amends s. 163.3245, F.S., to provide that an owner who has filed for a comprehensive plan amendment before December 31, 2007, is not required to comply with the provisions of a subsequently adopted sector plan without his written consent.

Section 3 amends s. 163.3164, F.S., to revises the definition of an "agricultural enclave" by deleting the requirement that concurrency provisions be consistent with s. 163.3180, F.S.

Section 4 provides that this act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is anticipated that this bill will require local governments to incur expenditures if owners of agricultural enclaves apply to the circuit court for relief pursuant to the Bert Harris Act. The potential impact to local governments is indeterminate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a fiscal impact on local governments resulting from application of the Bert Harris Act to agricultural enclaves. The potential impact is indeterminate.

⁴ Rule 9J-5.006(5), Florida Administrative Code.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Government Appropriations on April 15, 2008:

CS/CS/SB 2246 is different from CS/SB 2246 in that it requires an enclave owner to submit a claim to the local government pursuant to s. 70.001(4)(a), F.S., before seeking relief under the Bert Harris Act.

CS by Agriculture on April 3, 2008:

CS/SB 2246 is different from SB 2246 in that it

- i. changes references to “land uses and intensities” to “land uses, densities, and intensities”.
- ii. describes the surrounding area as “within 3 miles of the perimeter” rather than “a distance equal to the longest dimension of the parcel”.
- iii. deletes the words “to the contrary” following the clause “Notwithstanding any provisions of a comprehensive plan”.
- iv. adds a provision that says concurrency standards cannot be higher than the concurrency standards applied to previously approved development within 3 miles of the perimeter.
- v. changes the definition of an “agriculture enclave” to delete the requirement that concurrency provisions be consistent with s. 163.3180, F.S.

B. Amendments:

None.