

# 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.)

BILL: CS/CS/SB 1712

SPONSOR: Appropriations Subcommittee on General Government, Agriculture Committee, Senators Argenziano, Jones, Smith, and others

SUBJECT: Agricultural Economic Development

DATE: April 13, 2004      REVISED: 03/12/2004    03/16/2004    \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/4 amendments</u>
3.	_____	_____	<u>RI</u>	<u>Withdrawn</u>
4.	<u>Blizzard</u>	<u>Hayes</u>	<u>AGG</u>	<u>Fav/CS</u>
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for CS/SB 1712 gives the agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, 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) with the time period between the filing of a claim and the filing of an action being reduced to 60 days from 180 days. It establishes an “agricultural enclave” designation and provides that owners of such land may apply to amend the local government comprehensive plan and such application will be deemed to be “in compliance” with the requirements set forth for adoption of a comprehensive plan in s. 163.3184, F.S., if it includes uses consistent with the surrounding industrial, commercial, and residential uses. The bill requires that the lease on land subject to an agricultural lease be continued for the term of the lease up to one year if that land is 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 agency consider any agriculture lease in the development of its management plan. The bill requires regional water supply plans to consider limitations on alternative sources of water to self-suppliers. It requires a Water Management District (WMD) to inform an applicant for renewal of a permit for agricultural water use about the availability of 20-year permits. The bill 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 bill substantially amends ss. 163.2514, 163.2517, 373.0361, and 373.236, Florida Statutes, and creates sections 70.005, 259.047, and 373.407, Florida Statutes.

## 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. 163.3161-163.3244, 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. The Act contains a special designation and specific provisions relating to an urban infill and redevelopment area but there is no designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

### **Chapter 259, F.S.**

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation", and contains Florida's nationally recognized land acquisition programs: The Conservation and Recreation Lands program (CARL), the 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. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever programs. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands, but is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvement Trust Fund.

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of \$300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the DACS received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than \$3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. 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.

### **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 WMD.

### **Regional Water Supply Planning**

In 1997, the Legislature enacted ch. 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.

The DEP must submit an annual report on the status of regional water supply planning to the Governor and the Legislature, and each regional water supply plan must be reviewed every five years. The Northwest Florida, Southwest Florida, St. Johns River and South Florida water management districts have completed regional water supply plans, and the first update of these plans is scheduled for this year.

## **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 60 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 area utilized for bonafide agricultural purposes continuously for a period of five years and surrounded on at least 80 percent of its perimeter by existing or approved industrial, commercial, or residential development with available public services.

**Section 3.** Amends s. 163.2517, F.S., to provide that the owner or owners of an agricultural enclave may apply for an amendment to the local government comprehensive plan which may include uses and intensities consistent with the surrounding industrial, commercial, or residential area. Provides that such an amendment to a local comprehensive plan shall be deemed to prevent urban sprawl and meet the compliance requirement contained in s. 163.3184, F.S., even if it is inconsistent with other local, state, or regional planning ordinances, or the Florida Administrative Code.

**Section 4.** Creates s. 259.047, F.S., relating to the acquisition of lands with existing agriculture leases, to require that when lands with existing agricultural leases are purchased, the state shall allow any existing agricultural lease to remain in force for the actual time remaining on the lease agreement. 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. Provides that managing entities must consider any existing agriculture lease in the development of the agency's management plan.

**Section 5.** Amends s. 373.0361, F.S., relating to regional water supply planning, to provide that that population projects used to determine public water supply needs must be based on the best available data using the University of Florida's Bureau of Economic and Business Research medium population projections. Provides for recognition that alternative water supply development options for agricultural self-suppliers are limited.

**Section 6.** Amends s. 373.236, F.S., relating to the duration of consumptive use permits, to require that a water management district must inform an agricultural consumptive use permit applicant of the option to request a 20-year permit.

**Section 7.** Creates s. 373.407, F.S., relating to a memorandum of agreement for an agricultural related exemption, to require that DACS and each WMD enter into a Memorandum of Agreement (MOA) by July 1, 2005 in 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 8.** Provides that this act shall take effect on July 1, 2004.

**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.

**VIII. Amendments:**

None.