HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 CS — Agricultural Economic Development
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	11 Y, 0 N	Kaiser	Reese
2) Agriculture & Environment Appropriations Committee	10 Y, 0 N	Davis	Dixon
3) State Resources Council	9 Y, 0 N, w/CS	Kaiser	Hamby
4)			
5)			

SUMMARY ANALYSIS

HB 561 CS provides an agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, a cause of action under the Bert Harris Private Property Rights Protection Act. Additionally, the 180-day notice period is reduced to 90 days.

The bill establishes an “agricultural enclave” designation and authorizes the owners of such to apply for a comprehensive plan amendment and development of regional impact (DRI) approval, if applicable, that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The amendment or DRI application must include appropriate “new urbanism” concepts. The bill also establishes a “family farm agricultural enclave” designation and authorizes the owners of such to apply for a comprehensive plan amendment that may include land uses and intensities of use of surrounding areas. For both designations, the property must meet Greenbelt criteria and have been in agricultural production for the past five years. The bill requires local governments to act on an enclave application within 180 days. Failure to do so results in approval of the comprehensive plan amendment or DRI application.

Further, the bill directs local governments to delineate agricultural enclaves in their future land use plan, and authorizes owners of commercial agricultural parcels of 2500 acres or greater to apply to the Department of Community Affairs for rural land stewardship designation.

The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. The bill requires the purchasing agency to allow the lease to remain in full force for the remainder of the lease term. Where consistent with the purposes for which the property was acquired, the purchasing agency must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of the purchase.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. Furthermore, the bill requires water management districts to notify agricultural applicants for consumptive use permits of the right to apply for permits valid for 20 years.

By July 1, 2006, the bill requires each water management district to enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in s. 373.406, F.S.

HB 561 CS does not appear to have a fiscal impact requiring new state expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill provides an agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, an immediate cause of action under the Bert Harris Private Property Rights Protection Act.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act
Currently, section 70.001, F.S., sets forth the Bert Harris Act. This act 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.

HB 561 provides an agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, a cause of action under the Bert Harris Private Property Rights Protection Act. In addition, the 180-day time period is reduced to 90-days.

Agricultural Enclaves
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 plan, capital improvements, and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in 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. However, there is neither designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and ch. 28-24, F.A.C.

The DRI review process involves the regional review of proposed developments meeting defined thresholds by the regional planning councils. Statewide guidelines and standards are used in determining whether particular developments shall undergo development-of-regional-impact review.

The DRI process involves a preapplication conference, application for development approval, sufficiency determination by the appropriate regional planning council (RPC), notice of the public hearing, release of the RPC's report, public hearing, and issuance of the development order by the local government. In order to begin the DRI review process, the developer of a proposed DRI must file an application for development approval to the appropriate local government and regional planning council, as well as any agency with jurisdiction over potential impacts of the project.

The local government must advertise a public hearing within 30 days after filing the application for development approval or the proposed change and make a determination within 60 days. The local

government is required to hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application or the proposed change. Prior to undertaking any development, a developer that is required to undergo development-of-regional-impact review is required to file an application for development approval with the appropriate local government. If a developer seeks a comprehensive plan amendment related to a DRI, the developer must notify in writing the regional planning agency, the applicable local government, and DCA no later than the date of the preapplication conference or the submission of the proposed change. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development-of-regional-impact, including data and analysis.

Once a development order has been issued under the DRI program, the developer is responsible for filing a biennial report on the status of the project with the local government, regional planning council, and all affected permit agencies.

HB 561 CS establishes an "agricultural enclave" designation and authorizes the owners of such to apply for a comprehensive plan amendment and development of regional impact (DRI) approval, if applicable, that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The amendment or DRI application must include appropriate "new urbanism" concepts. The bill also establishes a "family farm agricultural enclave" designation and authorizes the owners of such to apply for a comprehensive plan amendment that may include land uses and intensities of use of surrounding areas. For both designations, the property must meet Greenbelt criteria and have been in agricultural production for the past five years. The bill requires local government to act on an enclave application within 180 days. Failure to do so results in approval of the comprehensive plan amendment or DRI application.

Further, the bill directs local governments to delineate agricultural enclaves in their future land use plan. And, authorizes owners of commercial agricultural parcels of 2500 acres or greater to apply to the Department of Community Affairs for rural land stewardship designation.

Land Acquisition
Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation," and contains Florida's nationally recognized land acquisition programs:

- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

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. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sales 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

Department of Agriculture and Consumer Services (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 agricultural 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 bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning
In 2004, the Legislature enacted ch. 2004-381, Laws of Florida, requiring water management districts to consider information provided by the University of Florida's Bureau of Economic and Business Research (BEBR) when determining population projections for public water supply.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

Consumptive Use Permits
Water use permits can be issued to non-government individuals or entities for a period of up to 20 years, but some applicants are not aware that they request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20 years.

Memorandum of Agreement for Agricultural Related Exemption
The bill establishes a process by which each water management district enters into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in s. 373.406, F.S.

C. SECTION DIRECTORY:

Section 1: Amending s. 70.001, F.S.; providing a cause of action for an aggrieved landowner; and, granting a 90-day notice period.

Section 2: Amending s. 163.2514, F.S.; providing definitions for agricultural enclave and family farm agricultural enclave.

Section 3: Amending s. 163.2517, F.S.; authorizing landowner of "agricultural enclave" and "family farm enclave" to apply for an amendment to the local government comprehensive plan and, in the case of an agricultural enclave owner, a DRI approval; and, providing requirements relating to application for a comprehensive plan amendment and DRI approval.

Section 4: Amending s. 163.3177, F.S.; requiring future land use plans to take into account agricultural enclaves and to establish land uses that are consistent with intensities of use of

surrounding industrial, commercial, or residential areas; decreasing acreage allowance for rural land stewardship areas; and, providing criteria for selecting rural land stewardship areas.

Section 5: Amending s. 163.3187, F.S.; providing that an agricultural enclave or large scale comprehensive plan amendment adopted as a result of informal mediation may be approved without regard to the statutory frequency limits.

Section 6: Creating s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 7: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 8: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 9: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 10: Creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

Section 11: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services (department) reports that this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 9 addresses the development of a memorandum of agreement between the department and each water management district in which the department would conduct a review to determine exemption(s) from existing statute. The department states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2005, the State Resources Council adopted a strike-all amendment to HB 561. The amendment:

- Clarifies the Bert Harris Act to ensure that granting a 90-day notice period to agricultural landowners before filing a lawsuit does not create an immediate cause of action.
- Applies the new cause of action created under the Bert Harris Act to the actions of cities as well as counties.
- Defines agricultural enclaves as parcels of 2560 acres or less (4 sections) unless an agricultural pest, disease or natural disaster is documented within 5 miles of the enclaves. In those instances, parcels may be 5120 acres (8 sections) or less.
- Authorizes owners of land defined as agricultural enclaves to apply for DRI approvals.
- Provides additional criteria for agricultural enclave qualifications.
- Defines “family farm enclaves” as 500 acres or less.
- Requires a local government to act on an enclave application within 180 days. Failure to act results in approval of the comprehensive plan amendment or DRI application.
- Authorizes enclave comprehensive plan amendments to be processed more than twice a year.
- Directs local governments to delineate agricultural enclaves in their future land use plan.
- Authorizes owners of commercial agricultural parcels of 2500 acres or greater to apply to the Department of Community Affairs for rural land stewardship designation.