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/SB 716
SPONSOR:	Environmental Preservation Committee, Community Affairs Committee, Senators Argenziano and Haridopolos
SUBJECT:	Agricultural Economic Development
DATE:	April 26, 2005 REVISED:

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

I. Summary:

This committee substitute (CS) provides that the required notice period for an action against a governmental entity by a property owner seeking compensation regarding a property that is classified as agricultural pursuant to s. 193.46, F.S., is reduced from 180 days to 90 days.

The CS provides that the owner of a parcel of land defined as an agricultural enclave may apply for an amendment to the local governmental comprehensive plan. The amendment is not subject to rule 9J-5.006(5), F.A.C., and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Further, the CS provides that nothing relating to agricultural enclaves shall preempt or replace any protection currently exisitng for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area.

“Agricultural enclave” is defined.

The CS provides that when land with an existing agricultural lease is acquired in fee simple, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under s. 253.034, F.S.

Finally, the CS 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 renewal of an agricultural water use permit that 20-year permits are available. The CS 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 CS substantially amends ss. 70.001, 163.3162, 163.3164, 373.0361, 373.2234, and 373.236, F.S.; and creates ss. 259.047 and 373.407, F.S.

II. Present Situation:

Bert Harris Act

Section 70.001, F.S., the Bert J. Harris, Jr., Private Property Rights Protection Act, was enacted by the Legislature in 1995[1] to provide a new cause of action for private property owners whose property has been Ainordinately burdened@ by state and local government action that may not rise to the level of a "taking" under the State or Federal Constitution.[2] The inordinate burden applies either to an existing use of real property or a vested right to a specific use, as determined by application of the rules of equitable estoppel.[3] Under s. 70.001(4)(a), F.S., a property owner seeking compensation must present, within one year of the governmental action, a written claim to the head of the governmental agency whose action caused the inordinate burden, along with a valid appraisal that shows the loss of the fair market value.

The governmental entity then has 180 days to make a written settlement offer that may include:

- An adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of on-site mitigation;
- Location of the least sensitive portion of the property;
- Conditioning the amount of development 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 agency; or
- No changes to the action of the governmental entity.[4]

If the property owner accepts the settlement offer, then the government implements it pursuant to s. 70.001(4)(c), F.S. If the settlement offer is declined, the government must issue within the 180 day period a written ripeness decision, which must contain identification of allowable uses on the affected land. This ripeness decision serves as the last prerequisite to judicial review, thus allowing the landowner to file a claim in circuit court pursuant to s. 70.001(5)(a)-(b), F.S.

[1] Ch. 95-181, s. 1, Laws of Fla.
[2] Section 70.001(1) and (9), Fla. Stat. (2002).
[3] Section 70.001(2)-(3)(a), Fla. Stat. (2002).
[4] Section 70.001(4), Fla. Stat. (2002).

Under s. 70.001(6)(a), F.S., the court decides if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property. Private property is inordinately burdened when a government action has directly restricted or limited the use of the property so that the owner is unable to attain reasonable, investment-backed expectations for the existing use, or a vested right in the existing use, of the property as a whole. Alternatively, property is inordinately burdened if the owner is left with existing or vested uses which are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good which should be borne by the public at large.[5]

If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved. The court then impanels a jury to decide the monetary value, pursuant to s. 70.001(6)(b), F.S., based upon the loss in fair market value attributable to the governmental action. The prevailing party is entitled to reasonable costs and attorney-s fees, pursuant to s. 70.001(6)(c), F.S., if the losing party did not make, or rejected, a bona fide settlement offer.

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 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. Florida statutes permit a special designation for an urban infill and redevelopment area and the Act has favorable provisions for areas so designated, but there is no similar designation of property as an “agricultural enclave” or any special provisions pertaining to such an area. A comprehensive plan amendment resulting from a compliance agreement pursuant to s. 163.3184(16), F.S., is exempt from the statutory limits on the frequency of adoption of amendments, but a large scale comprehensive plan amendment resulting from informal mediation in accordance with s. 163.3181(4), F.S., is not accorded a similar exemption.

Chapter 259, F.S.

Chapter 259, F.S., relating to "Land Acquisitions for Conservation or Recreation," 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

[5] Section 70.001(2)(e), Fla. Stat. (2002).

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.

Rural and Family Lands Protection Act

Florida has a statutory program intended, in part, to protect agricultural lands. The Rural and Family Lands Protection Act (Act), ss. 570.70 and 570.71, F.S., was enacted in 2001 to bring under public protection lands that serve to limit subdivision and conversion of agricultural and natural areas that provide economic, open space, water, and wildlife benefits by acquiring land or related interests in land such as perpetual, less-than-fee acquisitions, agricultural protection agreements, and resource conservation agreements and innovative planning and development strategies in rural areas.

Section 570.71, F.S., authorizes the DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to acquire perpetual, less-than-fee interests in land, to enter into agricultural protection agreements, and to enter into resource conservation agreements for the following public purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or
- Protection of agricultural lands threatened by conversion to other uses.

As part of the agricultural protection agreement, the parties must agree that the state will have a right to buy a conservation easement or rural land protection easement at the end of the 30-year term. The landowner may transfer or sell the property before the expiration of the 30-year term, but only if the property is sold subject to the agreement and the buyer becomes the successor in interest to the agricultural protection agreement. Upon mutual consent of the parties, a landowner may enter into a perpetual easement at any time during the term of an agricultural protection agreement. Landowners entering into an agricultural protection agreement may receive up to 50 percent of the purchase price at the time the agreement is entered into, and remaining payments on the balance will be equal annual payments over the term of the agreement.

Although no funds were made available to implement the Act, the department is authorized to use any funding made available by the state, federal government, other governmental entities, nongovernmental organizations, and private individuals. Not more than 10 percent of any funds made available to implement this act shall be expended for resource conservation agreements and agricultural protection agreements.

Rural Land Stewardship Areas

Florida also has a statutory program to protect agricultural lands through the use of transferable rural land use credits. Section 163.3177(11), F.S., provides for the establishment of rural land stewardship areas. This program encourages land use efficiencies within existing urban areas and

allows for the conversion of rural lands to other uses, where appropriate and consistent with the affected local comprehensive plan, through the use of innovative planning and development strategies. Such strategies may include urban villages, new towns, satellite communities, clustering and open space provisions, mixed-use development and sector planning.[6] The rural land stewardship area designation is intended to further the broad principles of rural sustainability, including:

- Restoration and maintenance of the economic value associated with rural lands;
- Control of urban sprawl;
- Identification and protection of ecosystems, habitats, and natural resources;
- Promotion of rural economic activity;
- Maintenance of the vitality of Florida's agricultural economy; and
- Protection of the character of Florida's rural areas.[7]

A local government may apply to DCA in writing to request consideration for authorization to designate a rural land stewardship area. Such area may not be less than 10,000 acres. The designated area must be located outside of a municipality and established urban growth boundaries.[8] The plan amendment designating the rural land stewardship area must include criteria for the creation of a receiving area within the stewardship area. At a minimum, these criteria must include the adequacy of suitable land for development that avoids conflict with environmentally sensitive land, compatibility between the transition of uses from higher density to lower intensity rural uses, and receiving area service boundaries which separate receiving areas from other land uses within the stewardship area.[9]

Following the adoption of a plan amendment that creates a rural land stewardship area, a local government, by ordinance, is required to assign credits to the area known as "transferable rural land use credits." These credits may only be used on lands designated as receiving areas and solely for the purpose of implementing innovative planning and development strategies. The underlying density assigned to a parcel ceases to exist once it is transferred to a receiving area or the underlying density to the parcel is utilized. The use or conveyance of these credits must be recorded in the county records where the property is located as a covenant or restrictive easement running with the land in favor of the county, a resource agency, or a recognized statewide land trust. Land may be withdrawn from a rural land stewardship area through a plan amendment.[10]

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 Water Management District.

[6] Section 163.3177(11)(b), F.S.
[7] Section 163.3177(11)(d)2., F.S.
[8] Section 163.3177(11)(d)6., F.S.
[9] Section 163.3177(11)(d)6., F.S.
[10] Section 163.3177(11)(d)6., F.S.

Regional Water Supply Planning
In 1997, the Legislature enacted chapter 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.

III. Effect of Proposed Changes:

Section 1 amends s. 70.001, F.S., to provide the required notice period for an action against a governmental entity by a property owner seeking compensation regarding a property that is classified as agricultural pursuant to s. 193.46, F.S., is reduced from 180 days to 90 days.

Section 2 amends s. 163.3162, F.S., to provide that the owner of a parcel of land defined as an agricultural enclave may apply for an amendment to the local governmental comprehensive plan. The amendment is not subject to rule 9J-5.006(5), F.A.C., and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.

In order to preserve commercial agricultural activity, encourage mixed-use infill development, prevent urban sprawl, and provide more efficient delivery of municipal services and facilities, the owner of a parcel defined as an agricultural enclave may apply for an amendment to the local government comprehensive plan.

Nothing within s. 163.3162,(5), F.S., relating to agricultural enclaves shall preempt or replace any protection currently exisitng for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area.

Section 3 amends s. 163.3164, F.S., to define “agricultural enclave.” “Agricultural enclave” means an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity;
- Has been in continuous use for bona fide agricultural purposes for a period of 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its permeter by:
    - Property that has existing industrial, commercial, or residential development; or
    - Property that the local government has designated in the local government’s comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided as part of a financially feasible 5-year schedule of capital improvements that is adopted by the local government or by an alternative provider of local government infrastructure; and
- Satisfies one of the following acreage criteria:
    - The parcel may not exceed 500 acres or;
    - The parcel may not exceed 2,560 acres, however, if the parcel is in active agricultural production and is located in a county, any portion of which is under a declared quarantine pursuant to ch. 581, F.S., (plant industry) or ch. 585, F.S., (animal industry), the parcel may not exceed 5,120 acres.

Section 4 creates s. 259.047, F.S., to provide that when land with an existing agricultural lease is acquired in fee simple, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under s. 253.034, F.S.

Where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Section 5 amends s. 373.0361, F.S., to provide that the regional water supply plan must include a list of wate source options, including traditional and alternative source options, from which local government, government-owned and privately owned utilities, self-suppliers, and others may choose, for water supply development. The list must contain provisions that recognize 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 water management districts to inform agricultural applicants of the availability of a 20-year consumptive use permit in the application form.

Section 8 creates s. 373.407, F.S., to require DACS and each water management district to enter into a Memorandum of Agreement (MOA) by July 1, 2006, 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 district, shall conduct a nonbinding review on 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 district.

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:

None.

C. Government Sector Impact:

The CS provides an exemption from the twice-per-year limitation on plan amendments relating to agricultural enclaves and family farm agricultural enclaves and large-scale plan amendments that are the result of informal mediation. The DCA may incur some additional costs associated with publishing notices of intent when reviewing these plan amendments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.