HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 Land Development Regulation
SPONSOR(S): Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 2246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Agribusiness	7 Y, 0 N	Kaiser	Reese
2) Environment & Natural Resources Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

In 1975 the Legislature enacted the "Local Government Comprehensive Planning and Land Development Regulation Act[1]." The intent of this act is to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development. During the 2006 legislative session, CS/HB 1015 was enacted to establish an agricultural enclave (enclave) designation and to provide a rebuttable presumption that an application to amend a comprehensive plan relating to an enclave is consistent with administrative rules relative to urban sprawl. Such proposed amendments are allowed to include land uses and intensities of use consistent with those of surrounding uses. Besides meeting other criteria, the enclave must meet Greenbelt criteria and have been in agricultural production for the past five years.

This bill allows for densities, along with land uses and intensities of use, consistent with surrounding uses to be included in a comprehensive plan amendment (CPA) submitted by a landowner of an agricultural enclave.

The bill also prohibits a local government from limiting land uses, densities and intensities of use consistent with uses, densities and intensities of use of the industrial, commercial or residential areas that surround the parcel to a distance equal to the longest dimension of the parcel. The bill further states that intensities of uses for an agricultural enclave shall, at a minimum, equal the average intensity of the areas that surround the parcel to a distance equal to the longest dimension of the parcel.

If a local government imposes development conditions preventing the owner of an agricultural enclave from achieving densities and intensities of use consistent with the surrounding areas described above, the owner may apply to the circuit court for appropriate relief pursuant to the Bert Harris Act.[2] The imposition of such conditions is presumed to impose an inordinate burden. This presumption may be rebutted by clear and convincing evidence.

The bill also provides that once the Department of Community Affairs (DCA) has reviewed the CPA, the owner of an agricultural enclave shall respond to objections, recommendations or comments (ORCs) issued by the DCA. Generally, the ORCs are responded to by the local government. The bill provides that, if the DCA has issued no ORCs or if the owner has responded to any ORCs and the local government denies or fails to approve the CPA within 60 days[3], the denial or failure to approve the CPA is presumed to impose an inordinate burden, and the owner may apply to circuit court for appropriate relief pursuant to the Bert Harris Act. This presumption may be rebutted by clear and convincing evidence.

And lastly, the bill provides that if an application for development approval or an application for a CPA has been filed and is pending prior to the effective date of a sector plan, the application is only required to comply with the provisions of a subsequently adopted sector plan upon written consent of the applicant. This provision applies to all applicants within a sector planning area pending before a local government on or before December 31, 2007.

The bill does not appear to have a fiscal impact on state government; however, there may be a fiscal impact on local governments resulting from application of the Bert Harris Act to agricultural enclaves as provided for in the bill. The potential impact, if any, is dependent upon future local government actions. The effective date of this legislation is July 1, 2008.

There is an amendment traveling with the bill. The amendment is described in "Section IV. Amendment/Council Substitute Changes" of the analysis.

[1] Ch. 75-257, L.O.F.
[2] Section 70.001, F.S.
[3] Pursuant to s. 163.3184(7), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill limits the discretion of local and state governments regarding land uses, densities, and intensities of use relating to lands classified as agricultural enclaves. The bill also provides a means of redress to the owner of an agricultural enclave when a local government denies or fails to approve a CPA offered by the owner.

Safeguard individual liberty: The bill limits the discretion of local and state governments regarding land uses, densities, and intensities of use relating to lands classified as agricultural enclaves. The bill also provides another avenue of recourse to the owner of an agricultural enclave when a local government denies or fails to approve a CPA offered by the owner.

B. EFFECT OF PROPOSED CHANGES:

Current situation

In 1975 the Legislature enacted the "Local Government Comprehensive Planning and Land Development Regulation Act[4]." The intent of this act is to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development. The act also intends "*that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights*[5]."

During the 2006 legislative session, CS/HB 1015 was enacted establishing agricultural enclave (enclave) designations. An enclave is defined as an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity;
- Has been in continuous use for bona fide agricultural purposes, as defined by statute[6], 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 perimeter 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 in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180, F.S.; and
- May not exceed 1,280 acres, unless the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area is determined to be urban and the parcel may not exceed 4,480 acres.

Additionally, the enclave must meet Greenbelt criteria and have been in agricultural production for the past five years.

[4] Ch. 75-257, L.O.F.
[5] Section 163.3161(9), F.S.
[6] Section 193.461, F.S.

The landowner of an enclave is authorized to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. Such amendment is presumed to discourage proliferation of urban sprawl[7]. This presumption may be disproved with clear and convincing evidence.

The local government and the landowner applying for the CPA have 180 days, once the local government has received a complete application, to reach a consensus regarding the CPA. The statutes require the local government and the landowner to set a schedule of the various steps[8] to be taken during the 180 days to ensure good faith negotiations.

Upon completion of negotiations, regardless of the outcome, the CPA is transmitted to the Department of Community Affairs (DCA) for review at the first available transmittal cycle. The CPA is presumed to be consistent with DCA rules relating to urban sprawl, unless disproved by clear and convincing evidence. The DCA, upon receipt of the complete proposed amendment, has 60 days to review the CPA and issue a report citing its objections, recommendations and comments (ORCs). The DCA submits the review of the CPA back to the local government.

After reviewing the report from the DCA, the local government has 60 days[9] to adopt, adopt with changes or determine that it will not adopt the CPA. The adoption of the CPA or the determination not to adopt the CPA must be made in a public hearing. Within 10 working days after adoption, the local government must transmit the adopted CPA to the DCA. If the CPA was unchanged and not the subject of review or objections[10], upon receipt, the DCA has 20 days, depending on the circumstances of the CPA[11], to issue a notice of intent (NOI) that the CPA is in compliance or not in compliance.

Even if the CPA is found in compliance, an affected party may file a petition with the DCA for a hearing conducted by the Division of Administrative Hearings (DOAH). Having reviewed the CPA, the DOAH shall submit a recommended order to the DCA. The DCA may issue a final order if it determines that the CPA is in compliance. If the DCA determines that the CPA is not in compliance, it must submit the recommended order to the Administration Commission for final agency action.

If the CPA is not in compliance, the DCA must forward the NOI to DOAH, which shall conduct a proceeding under ch. 120, F.S. In either proceeding, the local government's determination that the CPA is in compliance is presumed to be correct.[12] Prior to the hearing, an opportunity of mediation or dispute resolution must be made by the DCA; however, the mediation/dispute resolution may not delay the hearing past 90 days, unless agreed to by all parties.

The DOAH submits a recommended order to the Administration Commission (AC) for final agency action. If after the hearing, the AC finds that the CPA is not in compliance, the AC must specify remedial action which would bring the CPA into compliance.

Bert Harris Private Property Rights Protection Act

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 a taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property.

[7] Rule 9J-5.006(5), Florida Administrative Code

[8] Information submittal, public hearings, negotiations, and final action on the CPA.

[9] 120 days for CPAs adopted pursuant to s. 163.3191, F.S.

[10] Section 163.3184(7)(b), F.S.

[11] Section 163.3184(8)(b), F.S.

[12] Unless shown by a preponderance of the evidence that the CPA is not in compliance.

Sector Plans
In 1998, the legislature enacted s. 163.3245, F.S.,[13] which created a demonstration project authorizing DCA to enter into agreements with up to five local governments or combinations of local governments wherein the local governments would prepare an optional sector plan (long-range planning similar to comprehensive planning) and subsequent specific area plans (detailed planning similar to a development of regional impact) for specific areas within the sector. Each optional sector plan must be adopted into the local government comprehensive plan.

Approved optional sector plans must also meet the following criteria:
- Must include at least 5,000 acres of one or more local governmental jurisdictions; and
- Must emphasize urban form and protection of regionally significant resources and facilities.

The DCA may approve optional sector plans of less than 5,000 acres based on local circumstances if it is determined that the plan would further the purposes of comprehensive planning and environmental land and water management.[14]

To date, six local governments have attempted to undertake an optional sector plan. Of that total, two optional sector plans in Orange and Bay Counties have been approved and are under development. Another, Palm Beach County, has withdrawn from the process. Clay County has withdrawn from the program. And, Escambia County and the city of Bartow have proposals underway to begin the optional sector planning process.

Proposed changes
The bill allows for densities, along with land uses and intensities of use, consistent with surrounding uses to be included in a CPA submitted by a landowner of an agricultural enclave.

The bill also prohibits a local government from limiting land uses, densities and intensities of use consistent with uses, densities and intensities of use of the industrial, commercial or residential areas that surround the parcel to a distance equal to the longest dimension of the parcel. The bill further states that intensities of uses for an agricultural enclave shall, at a minimum, equal the average intensity of the areas that surround the parcel to a distance equal to the longest dimension of the parcel.

If a local government imposes development conditions preventing the owner of an agricultural enclave from achieving densities and intensities of use consistent with surrounding areas described above, the owner may apply to the circuit court for appropriate relief pursuant to the Bert Harris Act.[15] The imposition of such conditions is presumed to impose an inordinate burden. This presumption may be rebutted by clear and convincing evidence.

The bill also provides that once the DCA has reviewed the CPA, the owner of an agricultural enclave shall respond to ORCs issued by the DCA. Generally, the ORCs are responded to by the local government. The bill provides that if the DCA has issued no ORCs or if the owner has responded to any ORCs, and the local government denies or fails to approve the CPA within 60 days,[16] the denial or failure to approve the CPA is presumed to impose an inordinate burden, thus allowing the owner to apply to circuit court for appropriate relief pursuant to the Bert Harris Act. This presumption may be rebutted by clear and convincing evidence.

The bill states that a CPA proposed for an enclave and reviewed by the DCA is presumed to be consistent with discouraging urban sprawl.[17]

[13] Ch. 98-176, L.O.F.
[14] Chapters 163, part II, and 380, part 1, respectively
[15] Section 70.001, F.S.
[16] Pursuant to s. 163.3184(7), F.S.
[17] Rule 9J-5.006(5), Florida Administrative Code

And lastly, the bill provides that if an application for development approval or an application for a CPA has been filed and is pending prior to the effective date of a sector plan, the application is only required to comply with the provisions of a subsequently adopted sector plan upon written consent of the applicant. This provision applies to all applicants within a sector planning area pending before a local government on or before December 31, 2007.

C. SECTION DIRECTORY:

Section 1: Amending s. 163.3162, F.S.; providing for the use of lands surrounding an agricultural enclave; prohibiting a local government from limiting land uses, densities and intensities of use consistent with surrounding parcels; providing criteria regarding the intensity of use; providing court access to landowners in cases where a local government limits densities and intensities of use; and, providing court access to landowners in cases where a local government denies or fails to approve the CPA in a timely manner.

Section 2: Amending s. 163.3245, F.S.; revising provisions relating to optional sector plans; and, providing applicability to certain pending applications.

Section 3: Providing an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   It is anticipated that this legislation 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The owner of an agricultural enclave who invokes the Bert Harris Act is subject to the costs associated with such trial/hearing.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows "densities," along with land use and intensities of use, to be taken into consideration when a landowner of an agricultural enclave applies for a CPA. That change is noted throughout the bill; however, the word "densities" is not included on lines 41 and 42. This appears be a drafting error.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Wednesday, March 19, 2008, the Committee on Agribusiness adopted a strike-all amendment that is traveling with HB 1173. The differences between HB 1173 and the strike-all amendment are:

- The criteria used to determine densities and intensities of use of surrounding areas is changed to "within three miles of the perimeter of the parcel." In the bill, the criteria used was "a distance equal to the longest dimension of the parcel."

- For concurrency purposes, as in density, the agricultural enclave must be treated as the surrounding development has been treated, and calculated as the average concurrency requirements within three miles of the perimeter of the parcel.