

1 A bill to be entitled

2 An act relating to agricultural economic development;
3 amending s. 70.001, F.S.; providing a deadline for an
4 owner of agricultural land to present a claim prior to
5 filing an action against a governmental entity regarding
6 private property rights; amending s. 163.3162, F.S.;
7 providing for application for an amendment to the local
8 government comprehensive plan by the owner of land that
9 meets certain provisions of the definition of an
10 agricultural enclave; providing requirements relating to
11 such applications; exempting certain amendments from
12 specified rules of the Department of Community Affairs
13 under certain circumstances; amending s. 163.3164, F.S.;
14 defining the term "agricultural enclave" for purposes of
15 the Local Government Comprehensive Planning and Land
16 Development Regulation Act; creating s. 259.047, F.S.;
17 providing requirements relating to the purchase of land on
18 which an agricultural lease exists; amending s. 373.0361,
19 F.S.; providing for recognition that alternative water
20 supply development options for agricultural self-suppliers
21 are limited; amending s. 373.2234, F.S.; conforming a
22 cross-reference; amending s. 373.236, F.S.; requiring
23 water management districts to inform landowners of the
24 option to obtain certain consumptive use permits; creating
25 s. 373.407, F.S.; providing for memoranda of agreement
26 regarding qualification for agricultural-related
27 exemptions; providing an effective date.

28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Paragraphs (a) and (c) of subsection (4),
 32 paragraph (a) of subsection (5), and paragraph (c) of subsection
 33 (6) of section 70.001, Florida Statutes, are amended to read:

34 70.001 Private property rights protection.--

35 (4) (a) Not less than 180 days prior to filing an action
 36 under this section against a governmental entity, a property
 37 owner who seeks compensation under this section must present the
 38 claim in writing to the head of the governmental entity, except
 39 that if the property is classified as agricultural pursuant to
 40 s. 193.461, the notice period is 90 days. The property owner
 41 must submit, along with the claim, a bona fide, valid appraisal
 42 that supports the claim and demonstrates the loss in fair market
 43 value to the real property. If the action of government is the
 44 culmination of a process that involves more than one
 45 governmental entity, or if a complete resolution of all relevant
 46 issues, in the view of the property owner or in the view of a
 47 governmental entity to whom a claim is presented, requires the
 48 active participation of more than one governmental entity, the
 49 property owner shall present the claim as provided in this
 50 section to each of the governmental entities.

51 (c) During the 90-day-notice period or the 180-day-notice
 52 period, unless extended by agreement of the parties, the
 53 governmental entity shall make a written settlement offer to
 54 effectuate:

55 1. An adjustment of land development or permit standards
 56 or other provisions controlling the development or use of land.

- 57 | 2. Increases or modifications in the density, intensity,
- 58 | or use of areas of development.
- 59 | 3. The transfer of developmental rights.
- 60 | 4. Land swaps or exchanges.
- 61 | 5. Mitigation, including payments in lieu of onsite
- 62 | mitigation.
- 63 | 6. Location on the least sensitive portion of the
- 64 | property.
- 65 | 7. Conditioning the amount of development or use
- 66 | permitted.
- 67 | 8. A requirement that issues be addressed on a more
- 68 | comprehensive basis than a single proposed use or development.
- 69 | 9. Issuance of the development order, a variance, special
- 70 | exception, or other extraordinary relief.
- 71 | 10. Purchase of the real property, or an interest therein,
- 72 | by an appropriate governmental entity.
- 73 | 11. No changes to the action of the governmental entity.

74 |
 75 | If the property owner accepts the settlement offer, the
 76 | governmental entity may implement the settlement offer by
 77 | appropriate development agreement; by issuing a variance,
 78 | special exception, or other extraordinary relief; or by other
 79 | appropriate method, subject to paragraph (d).

80 | (5) (a) During the 90-day-notice period or the 180-day-
 81 | notice period, unless a settlement offer is accepted by the
 82 | property owner, each of the governmental entities provided
 83 | notice pursuant to paragraph (4) (a) shall issue a written
 84 | ripeness decision identifying the allowable uses to which the

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85 subject property may be put. The failure of the governmental
86 entity to issue a written ripeness decision during the
87 applicable 90-day-notice period or 180-day-notice period shall
88 be deemed to ripen the prior action of the governmental entity,
89 and shall operate as a ripeness decision that has been rejected
90 by the property owner. The ripeness decision, as a matter of
91 law, constitutes the last prerequisite to judicial review, and
92 the matter shall be deemed ripe or final for the purposes of the
93 judicial proceeding created by this section, notwithstanding the
94 availability of other administrative remedies.

95 (6)

96 (c)1. In any action filed pursuant to this section, the
97 property owner is entitled to recover reasonable costs and
98 attorney fees incurred by the property owner, from the
99 governmental entity or entities, according to their
100 proportionate share as determined by the court, from the date of
101 the filing of the circuit court action, if the property owner
102 prevails in the action and the court determines that the
103 settlement offer, including the ripeness decision, of the
104 governmental entity or entities did not constitute a bona fide
105 offer to the property owner which reasonably would have resolved
106 the claim, based upon the knowledge available to the
107 governmental entity or entities and the property owner during
108 the 90-day-notice period or the 180-day-notice period.

109 2. In any action filed pursuant to this section, the
110 governmental entity or entities are entitled to recover
111 reasonable costs and attorney fees incurred by the governmental
112 entity or entities from the date of the filing of the circuit

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113 court action, if the governmental entity or entities prevail in
 114 the action and the court determines that the property owner did
 115 not accept a bona fide settlement offer, including the ripeness
 116 decision, which reasonably would have resolved the claim fairly
 117 to the property owner if the settlement offer had been accepted
 118 by the property owner, based upon the knowledge available to the
 119 governmental entity or entities and the property owner during
 120 the 90-day-notice period or the 180-day-notice period.

121 3. The determination of total reasonable costs and
 122 attorney fees pursuant to this paragraph shall be made by the
 123 court and not by the jury. Any proposed settlement offer or any
 124 proposed ripeness decision, except for the final written
 125 settlement offer or the final written ripeness decision, and any
 126 negotiations or rejections in regard to the formulation either
 127 of the settlement offer or the ripeness decision, are
 128 inadmissible in the subsequent proceeding established by this
 129 section except for the purposes of the determination pursuant to
 130 this paragraph.

131 Section 2. Subsection (5) is added to section 163.3162,
 132 Florida Statutes, to read:

133 163.3162 Agricultural Lands and Practices Act.--

134 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--

135 (a) The owner of a parcel of land defined as an
 136 agricultural enclave under s. 163.3164(33)(e)1. may apply for an
 137 amendment to the local government comprehensive plan pursuant to
 138 s. 163.3187. Such amendment is not subject to rule 9J-5.006(5),
 139 Florida Administrative Code, and may include land uses and
 140 intensities of use that are consistent with the uses and

141 intensities of use of the industrial, commercial, or residential
 142 areas that surround the parcel. The local government shall make
 143 a determination regarding transmittal of such amendment within
 144 120 days after receipt of a complete application for the
 145 amendment and transmit the amendment to the state land planning
 146 agency for review pursuant to s. 163.3184 at the first available
 147 transmittal cycle. The state land planning agency may not use
 148 any provision of rule 9J-5.006(5), Florida Administrative Code,
 149 as a factor in determining compliance of an amendment under this
 150 paragraph.

151 (b) In order to preserve commercial agricultural activity,
 152 encourage mixed-use infill development, prevent urban sprawl,
 153 and provide more efficient delivery of municipal services and
 154 facilities, the owner of a parcel of land defined as an
 155 agricultural enclave under s. 163.3164(33)(e)2. may apply for an
 156 amendment to the local government comprehensive plan pursuant to
 157 s. 163.3187. Such amendment is not subject to rule 9J-5.006(5),
 158 Florida Administrative Code, and may include land uses and
 159 intensities of use that are consistent with the uses and
 160 intensities of use of the industrial, commercial, or residential
 161 areas that surround the parcel.

162 1. The local government and the owner of a parcel of land
 163 that is the subject of an application for an amendment under
 164 this paragraph shall have 180 days following the date that the
 165 local government receives a complete application to negotiate in
 166 good faith to reach consensus on the land uses and intensities
 167 of use that are consistent with the uses and intensities of use
 168 of the industrial, commercial, or residential areas that

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169 surround the parcel. Within 30 days after the local government's
170 receipt of such an application, the local government and owner
171 must agree in writing to a schedule for information submittal,
172 public hearings, negotiations, and final action on the
173 amendment, which schedule may thereafter be altered only with
174 the written consent of the local government and the owner.
175 Compliance with the schedule in the written agreement
176 constitutes good faith negotiations for purposes of subparagraph
177 3.

178 2. Upon conclusion of good faith negotiations under
179 subparagraph 1., regardless of whether the local government and
180 owner reach consensus on the land uses and intensities of use
181 that are consistent with the uses and intensities of use of the
182 industrial, commercial, or residential areas that surround the
183 parcel, the amendment must be transmitted to the state land
184 planning agency for review pursuant to s. 163.3184. If the local
185 government fails to transmit the amendment within 180 days after
186 receipt of a complete application, the amendment must be
187 immediately transferred to the state land planning agency for
188 such review at the first available transmittal cycle. The state
189 land planning agency may not use any provision of rule 9J-
190 5.006(5), Florida Administrative Code, as a factor in
191 determining compliance of an amendment under this paragraph.

192 3. If the owner fails to negotiate in good faith, rule 9J-
193 5.006(5), Florida Administrative Code, shall apply throughout
194 the negotiation and amendment process under this paragraph.

195 (c) Nothing within this subsection relating to
196 agricultural enclaves shall preempt or replace any protection

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197 currently existing for any property located within the
198 boundaries of the following areas:

- 199 1. The Wekiva Study Area, as described in s. 369.316; or
200 2. The Everglades Protection Area, as defined in s.
201 373.4592(2).

202 Section 3. Subsection (33) is added to section 163.3164,
203 Florida Statutes, to read:

204 163.3164 Local Government Comprehensive Planning and Land
205 Development Regulation Act; definitions.--As used in this act:

206 (33) "Agricultural enclave" means an unincorporated,
207 undeveloped parcel that:

208 (a) Is owned by a single person or entity;

209 (b) Has been in continuous use for bona fide agricultural
210 purposes, as defined by s. 193.461, for a period of 5 years
211 prior to the date of any comprehensive plan amendment
212 application;

213 (c) Is surrounded on at least 75 percent of its perimeter
214 by:

215 1. Property that has existing industrial, commercial, or
216 residential development; or

217 2. Property that the local government has designated, in
218 the local government's comprehensive plan, zoning map, and
219 future land use map, as land that is to be developed for
220 industrial, commercial, or residential purposes, and at least 75
221 percent of such property is existing industrial, commercial, or
222 residential development;

223 (d) Has public services, including water, wastewater,
224 transportation, schools, and recreation facilities, available or

225 such public services are scheduled to be provided as part of a
 226 financially feasible 5-year schedule of capital improvements
 227 that is adopted by the local government or by an alternative
 228 provider of local government infrastructure; and

229 (e) Satisfies one of the following acreage criteria:

230 1. The parcel may not exceed 640 acres; or

231 2. The parcel may not exceed 2,560 acres.

232 Section 4. Section 259.047, Florida Statutes, is created
 233 to read:

234 259.047 Acquisition of land on which an agricultural lease
 235 exists.--

236 (1) When land with an existing agricultural lease is
 237 acquired in fee simple pursuant to this chapter or chapter 375,
 238 the existing agricultural lease may continue in force for the
 239 actual time remaining on the lease agreement. Any entity
 240 managing lands acquired under this section must consider
 241 existing agricultural leases in the development of a land
 242 management plan required under s. 253.034.

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

247 Section 5. Paragraph (a) of subsection (2) of section
 248 373.0361, Florida Statutes, is amended to read:

249 373.0361 Regional water supply planning.--

250 (2) Each regional water supply plan shall be based on at
 251 least a 20-year planning period and shall include, but need not
 252 be limited to:

253 (a) A water supply development component for each water
254 supply planning region identified by the district which
255 includes:

256 1. A quantification of the water supply needs for all
257 existing and future reasonable-beneficial uses within the
258 planning horizon. The level-of-certainty planning goal
259 associated with identifying the water supply needs of existing
260 and future reasonable-beneficial uses shall be based upon
261 meeting those needs for a 1-in-10-year drought event. Population
262 projections used for determining public water supply needs must
263 be based upon the best available data. In determining the best
264 available data, the district shall consider the University of
265 Florida's Bureau of Economic and Business Research (BEBR) medium
266 population projections and any population projection data and
267 analysis submitted by a local government pursuant to the public
268 workshop described in subsection (1) if the data and analysis
269 support the local government's comprehensive plan. Any
270 adjustment of or deviation from the BEBR projections must be
271 fully described, and the original BEBR data must be presented
272 along with the adjusted data.

273 2. A list of water supply development project options,
274 including traditional and alternative water supply project
275 options, from which local government, government-owned and
276 privately owned utilities, regional water supply authorities,
277 multijurisdictional water supply entities, self-suppliers, and
278 others may choose for water supply development. In addition to
279 projects listed by the district, such users may propose specific
280 projects for inclusion in the list of alternative water supply

281 projects. If such users propose a project to be listed as an
282 alternative water supply project, the district shall determine
283 whether it meets the goals of the plan, and, if so, it shall be
284 included in the list. The total capacity of the projects
285 included in the plan shall exceed the needs identified in
286 subparagraph 1. and shall take into account water conservation
287 and other demand management measures, as well as water resources
288 constraints, including adopted minimum flows and levels and
289 water reservations. Where the district determines it is
290 appropriate, the plan should specifically identify the need for
291 multijurisdictional approaches to project options that, based on
292 planning level analysis, are appropriate to supply the intended
293 uses and that, based on such analysis, appear to be permissible
294 and financially and technically feasible. The list of water
295 supply development options must contain provisions that
296 recognize that alternative water supply options for agricultural
297 self-suppliers are limited.

298 3. For each project option identified in subparagraph 2.,
299 the following shall be provided:

300 a. An estimate of the amount of water to become available
301 through the project.

302 b. The timeframe in which the project option should be
303 implemented and the estimated planning-level costs for capital
304 investment and operating and maintaining the project.

305 c. An analysis of funding needs and sources of possible
306 funding options. For alternative water supply projects the water
307 management districts shall provide funding assistance in
308 accordance with s. 373.1961(3).

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309 d. Identification of the entity that should implement each
310 project option and the current status of project implementation.

311 Section 6. Section 373.2234, Florida Statutes, is amended
312 to read:

313 373.2234 Preferred water supply sources.--The governing
314 board of a water management district is authorized to adopt
315 rules that identify preferred water supply sources for
316 consumptive uses for which there is sufficient data to establish
317 that a preferred source will provide a substantial new water
318 supply to meet the existing and projected reasonable-beneficial
319 uses of a water supply planning region identified pursuant to s.
320 373.0361(1), while sustaining existing water resources and
321 natural systems. At a minimum, such rules must contain a
322 description of the preferred water supply source and an
323 assessment of the water the preferred source is projected to
324 produce. If an applicant proposes to use a preferred water
325 supply source, that applicant's proposed water use is subject to
326 s. 373.223(1), except that the proposed use of a preferred water
327 supply source must be considered by a water management district
328 when determining whether a permit applicant's proposed use of
329 water is consistent with the public interest pursuant to s.
330 373.223(1)(c). A consumptive use permit issued for the use of a
331 preferred water supply source must be granted, when requested by
332 the applicant, for at least a 20-year period and may be subject
333 to the compliance reporting provisions of s. 373.236 (4) ~~(3)~~.
334 Nothing in this section shall be construed to exempt the use of
335 preferred water supply sources from the provisions of ss.
336 373.016(4) and 373.223(2) and (3), or be construed to provide

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337 that permits issued for the use of a nonpreferred water supply
338 source must be issued for a duration of less than 20 years or
339 that the use of a nonpreferred water supply source is not
340 consistent with the public interest. Additionally, nothing in
341 this section shall be interpreted to require the use of a
342 preferred water supply source or to restrict or prohibit the use
343 of a nonpreferred water supply source. Rules adopted by the
344 governing board of a water management district to implement this
345 section shall specify that the use of a preferred water supply
346 source is not required and that the use of a nonpreferred water
347 supply source is not restricted or prohibited.

348 Section 7. Present subsections (2) and (3) of section
349 373.236, Florida Statutes, are renumbered as subsections (3) and
350 (4), respectively, present subsection (4) is renumbered as
351 subsection (5) and amended, and a new subsection (2) is added to
352 that section, to read:

353 373.236 Duration of permits; compliance reports.--

354 (2) The Legislature finds that some agricultural
355 landowners remain unaware of their ability to request a 20-year
356 consumptive use permit under subsection (1) for initial permits
357 or for renewals. Therefore, the water management districts shall
358 inform agricultural applicants of this option in the application
359 form.

360 (5)~~(4)~~ Permits approved for the development of alternative
361 water supplies shall be granted for a term of at least 20 years.
362 However, if the permittee issues bonds for the construction of
363 the project, upon request of the permittee prior to the
364 expiration of the permit, that permit shall be extended for such

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365 additional time as is required for the retirement of bonds, not
366 including any refunding or refinancing of such bonds, provided
367 that the governing board determines that the use will continue
368 to meet the conditions for the issuance of the permit. Such a
369 permit is subject to compliance reports under subsection (4) ~~(3)~~.

370 Section 8. Section 373.407, Florida Statutes, is created
371 to read:

372 373.407 Memorandum of agreement for an agricultural-
373 related exemption.--No later than July 1, 2007, the Department
374 of Agriculture and Consumer Services and each water management
375 district shall enter into a memorandum of agreement under which
376 the Department of Agricultural and Consumer Services shall
377 assist in a determination by a water management district as to
378 whether an existing or proposed activity qualifies for the
379 exemption in s. 373.406(2). The memorandum of agreement shall
380 provide a process by which, upon the request of a water
381 management district, the Department of Agriculture and Consumer
382 Services shall conduct a nonbinding review as to whether an
383 existing or proposed activity qualifies for an agricultural-
384 related exemption in s. 373.406(2). The memorandum of agreement
385 shall provide processes and procedures by which the Department
386 of Agriculture and Consumer Services shall undertake this review
387 effectively and efficiently and issue a recommendation.

388 Section 9. This act shall take effect upon becoming a law.