

CHAMBER ACTION

1 The Agriculture Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to agricultural economic development;
7 amending s. 70.001, F.S.; providing a deadline for an
8 owner of agricultural land to present a claim prior to
9 filing an action against a governmental entity regarding
10 private property rights; amending s. 163.3162, F.S.;
11 providing for application for an amendment to the local
12 government comprehensive plan by the owner of land that
13 meets certain provisions of the definition of an
14 agricultural enclave; providing requirements relating to
15 such applications; exempting certain amendments from
16 specified rules of the Department of Community Affairs
17 under certain circumstances; amending s. 163.3164, F.S.;
18 defining the term "agricultural enclave" for purposes of
19 the Local Government Comprehensive Planning and Land
20 Development Regulation Act; creating s. 259.047, F.S.;
21 providing requirements relating to the purchase of land on
22 which an agricultural lease exists; amending s. 373.0361,
23 F.S.; providing for recognition that alternative water

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24 supply development options for agricultural self-suppliers
 25 are limited; amending s. 373.2234, F.S.; conforming a
 26 cross-reference; amending s. 373.236, F.S.; requiring
 27 water management districts to inform landowners of the
 28 option to obtain certain consumptive use permits; creating
 29 s. 373.407, F.S.; providing for memoranda of agreement
 30 regarding qualification for agricultural-related
 31 exemptions; providing an effective date.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

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

38 70.001 Private property rights protection.--

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

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52 active participation of more than one governmental entity, the
53 property owner shall present the claim as provided in this
54 section to each of the governmental entities.

55 (c) During the 90-day-notice period or the 180-day-notice
56 period, unless extended by agreement of the parties, the
57 governmental entity shall make a written settlement offer to
58 effectuate:

59 1. An adjustment of land development or permit standards
60 or other provisions controlling the development or use of land.

61 2. Increases or modifications in the density, intensity,
62 or use of areas of development.

63 3. The transfer of developmental rights.

64 4. Land swaps or exchanges.

65 5. Mitigation, including payments in lieu of onsite
66 mitigation.

67 6. Location on the least sensitive portion of the
68 property.

69 7. Conditioning the amount of development or use
70 permitted.

71 8. A requirement that issues be addressed on a more
72 comprehensive basis than a single proposed use or development.

73 9. Issuance of the development order, a variance, special
74 exception, or other extraordinary relief.

75 10. Purchase of the real property, or an interest therein,
76 by an appropriate governmental entity.

77 11. No changes to the action of the governmental entity.
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79 | If the property owner accepts the settlement offer, the
80 | governmental entity may implement the settlement offer by
81 | appropriate development agreement; by issuing a variance,
82 | special exception, or other extraordinary relief; or by other
83 | appropriate method, subject to paragraph (d).

84 | (5) (a) During the 90-day-notice period or the 180-day-
85 | notice period, unless a settlement offer is accepted by the
86 | property owner, each of the governmental entities provided
87 | notice pursuant to paragraph (4) (a) shall issue a written
88 | ripeness decision identifying the allowable uses to which the
89 | subject property may be put. The failure of the governmental
90 | entity to issue a written ripeness decision during the
91 | applicable 90-day-notice period or 180-day-notice period shall
92 | be deemed to ripen the prior action of the governmental entity,
93 | and shall operate as a ripeness decision that has been rejected
94 | by the property owner. The ripeness decision, as a matter of
95 | law, constitutes the last prerequisite to judicial review, and
96 | the matter shall be deemed ripe or final for the purposes of the
97 | judicial proceeding created by this section, notwithstanding the
98 | availability of other administrative remedies.

99 | (6)

100 | (c)1. In any action filed pursuant to this section, the
101 | property owner is entitled to recover reasonable costs and
102 | attorney fees incurred by the property owner, from the
103 | governmental entity or entities, according to their
104 | proportionate share as determined by the court, from the date of
105 | the filing of the circuit court action, if the property owner
106 | prevails in the action and the court determines that the

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107 settlement offer, including the ripeness decision, of the
108 governmental entity or entities did not constitute a bona fide
109 offer to the property owner which reasonably would have resolved
110 the claim, based upon the knowledge available to the
111 governmental entity or entities and the property owner during
112 the 90-day-notice period or the 180-day-notice period.

113 2. In any action filed pursuant to this section, the
114 governmental entity or entities are entitled to recover
115 reasonable costs and attorney fees incurred by the governmental
116 entity or entities from the date of the filing of the circuit
117 court action, if the governmental entity or entities prevail in
118 the action and the court determines that the property owner did
119 not accept a bona fide settlement offer, including the ripeness
120 decision, which reasonably would have resolved the claim fairly
121 to the property owner if the settlement offer had been accepted
122 by the property owner, based upon the knowledge available to the
123 governmental entity or entities and the property owner during
124 the 90-day-notice period or the 180-day-notice period.

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

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

137 163.3162 Agricultural Lands and Practices Act.--

138 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The
139 owner of a parcel of land defined as an agricultural enclave
140 under s. 163.3164(33) may apply for an amendment to the local
141 government comprehensive plan pursuant to s. 163.3187. Such
142 amendment is not subject to rule 9J-5.006(5), Florida
143 Administrative Code, and may include land uses and intensities
144 of use that are consistent with the uses and intensities of use
145 of the industrial, commercial, or residential areas that
146 surround the parcel.

147 (a) The local government and the owner of a parcel of land
148 that is the subject of an application for an amendment shall
149 have 180 days following the date that the local government
150 receives an application to negotiate in good faith to reach
151 consensus on the land uses and intensities of use that are
152 consistent with the uses and intensities of use of the
153 industrial, commercial, or residential areas that surround the
154 parcel. Within 30 days after the local government's receipt of
155 such an application, the local government and owner must agree
156 in writing to a schedule for information submittal, public
157 hearings, negotiations, and final action on the amendment, which
158 schedule may thereafter be altered only with the written consent
159 of the local government and the owner. Compliance with the
160 schedule in the written agreement constitutes good-faith
161 negotiations for purposes of paragraph (c).

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162 (b) Upon conclusion of good-faith negotiations under
163 paragraph (a), regardless of whether the local government and
164 owner reach consensus on the land uses and intensities of use
165 that are consistent with the uses and intensities of use of the
166 industrial, commercial, or residential areas that surround the
167 parcel, the amendment must be transmitted to the state land
168 planning agency for review pursuant to s. 163.3184. If the local
169 government fails to transmit the amendment within 180 days after
170 receipt of an application, the amendment must be immediately
171 transferred to the state land planning agency for such review at
172 the first available transmittal cycle. The state land planning
173 agency may not use any provision of rule 9J-5.006(5), Florida
174 Administrative Code, as a factor in determining compliance of an
175 amendment.

176 (c) If the owner fails to negotiate in good faith, rule
177 9J-5.006(5), Florida Administrative Code, shall apply throughout
178 the negotiation and amendment process.

179 (d) Nothing within this subsection relating to
180 agricultural enclaves shall preempt or replace any protection
181 currently existing for any property located within the
182 boundaries of the following areas:

- 183 1. The Wekiva Study Area, as described in s. 369.316; or
184 2. The Everglades Protection Area, as defined in s.
185 373.4592(2).

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

188 163.3164 Local Government Comprehensive Planning and Land
189 Development Regulation Act; definitions.--As used in this act:

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190 (33) "Agricultural enclave" means an unincorporated,
 191 undeveloped parcel that:
 192 (a) Is owned by a single person or entity;
 193 (b) Has been in continuous use for bona fide agricultural
 194 purposes, as defined by s. 193.461, for a period of 5 years
 195 prior to the date of any comprehensive plan amendment
 196 application;
 197 (c) Is surrounded on at least 75 percent of its perimeter
 198 by:
 199 1. Property that has existing industrial, commercial, or
 200 residential development; or
 201 2. Property that the local government has designated, in
 202 the local government's comprehensive plan, zoning map, and
 203 future land use map, as land that is to be developed for
 204 industrial, commercial, or residential purposes, and at least 75
 205 percent of such property is existing industrial, commercial, or
 206 residential development;
 207 (d) Has public services, including water, wastewater,
 208 transportation, schools, and recreation facilities, available or
 209 such public services are scheduled to be provided by the local
 210 government or by an alternative provider of local government
 211 infrastructure consistent with applicable concurrency provisions
 212 of s. 163.3180; and
 213 (e) Does not exceed 2,560 acres; however, if the property
 214 has been determined to be urban or suburban by the state land
 215 planning agency, the parcel may not exceed 5,120 acres.
 216 Section 4. Section 259.047, Florida Statutes, is created
 217 to read:

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218 259.047 Acquisition of land on which an agricultural lease
219 exists.--

220 (1) When land with an existing agricultural lease is
221 acquired in fee simple pursuant to this chapter or chapter 375,
222 the existing agricultural lease may continue in force for the
223 actual time remaining on the lease agreement. Any entity
224 managing lands acquired under this section must consider
225 existing agricultural leases in the development of a land
226 management plan required under s. 253.034.

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

231 Section 5. Paragraph (a) of subsection (2) of section
232 373.0361, Florida Statutes, is amended to read:

233 373.0361 Regional water supply planning.--

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

237 (a) A water supply development component for each water
238 supply planning region identified by the district which
239 includes:

240 1. A quantification of the water supply needs for all
241 existing and future reasonable-beneficial uses within the
242 planning horizon. The level-of-certainty planning goal
243 associated with identifying the water supply needs of existing
244 and future reasonable-beneficial uses shall be based upon
245 meeting those needs for a 1-in-10-year drought event. Population

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246 | projections used for determining public water supply needs must
247 | be based upon the best available data. In determining the best
248 | available data, the district shall consider the University of
249 | Florida's Bureau of Economic and Business Research (BEBR) medium
250 | population projections and any population projection data and
251 | analysis submitted by a local government pursuant to the public
252 | workshop described in subsection (1) if the data and analysis
253 | support the local government's comprehensive plan. Any
254 | adjustment of or deviation from the BEBR projections must be
255 | fully described, and the original BEBR data must be presented
256 | along with the adjusted data.

257 | 2. A list of water supply development project options,
258 | including traditional and alternative water supply project
259 | options, from which local government, government-owned and
260 | privately owned utilities, regional water supply authorities,
261 | multijurisdictional water supply entities, self-suppliers, and
262 | others may choose for water supply development. In addition to
263 | projects listed by the district, such users may propose specific
264 | projects for inclusion in the list of alternative water supply
265 | projects. If such users propose a project to be listed as an
266 | alternative water supply project, the district shall determine
267 | whether it meets the goals of the plan, and, if so, it shall be
268 | included in the list. The total capacity of the projects
269 | included in the plan shall exceed the needs identified in
270 | subparagraph 1. and shall take into account water conservation
271 | and other demand management measures, as well as water resources
272 | constraints, including adopted minimum flows and levels and
273 | water reservations. Where the district determines it is

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274 appropriate, the plan should specifically identify the need for
 275 multijurisdictional approaches to project options that, based on
 276 planning level analysis, are appropriate to supply the intended
 277 uses and that, based on such analysis, appear to be permissible
 278 and financially and technically feasible. The list of water
 279 supply development options must contain provisions that
 280 recognize that alternative water supply options for agricultural
 281 self-suppliers are limited.

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

284 a. An estimate of the amount of water to become available
 285 through the project.

286 b. The timeframe in which the project option should be
 287 implemented and the estimated planning-level costs for capital
 288 investment and operating and maintaining the project.

289 c. An analysis of funding needs and sources of possible
 290 funding options. For alternative water supply projects the water
 291 management districts shall provide funding assistance in
 292 accordance with s. 373.1961(3).

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

295 Section 6. Section 373.2234, Florida Statutes, is amended
 296 to read:

297 373.2234 Preferred water supply sources.--The governing
 298 board of a water management district is authorized to adopt
 299 rules that identify preferred water supply sources for
 300 consumptive uses for which there is sufficient data to establish
 301 that a preferred source will provide a substantial new water

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302 supply to meet the existing and projected reasonable-beneficial
303 uses of a water supply planning region identified pursuant to s.
304 373.0361(1), while sustaining existing water resources and
305 natural systems. At a minimum, such rules must contain a
306 description of the preferred water supply source and an
307 assessment of the water the preferred source is projected to
308 produce. If an applicant proposes to use a preferred water
309 supply source, that applicant's proposed water use is subject to
310 s. 373.223(1), except that the proposed use of a preferred water
311 supply source must be considered by a water management district
312 when determining whether a permit applicant's proposed use of
313 water is consistent with the public interest pursuant to s.
314 373.223(1)(c). A consumptive use permit issued for the use of a
315 preferred water supply source must be granted, when requested by
316 the applicant, for at least a 20-year period and may be subject
317 to the compliance reporting provisions of s. 373.236 (4) ~~(3)~~.
318 Nothing in this section shall be construed to exempt the use of
319 preferred water supply sources from the provisions of ss.
320 373.016(4) and 373.223(2) and (3), or be construed to provide
321 that permits issued for the use of a nonpreferred water supply
322 source must be issued for a duration of less than 20 years or
323 that the use of a nonpreferred water supply source is not
324 consistent with the public interest. Additionally, nothing in
325 this section shall be interpreted to require the use of a
326 preferred water supply source or to restrict or prohibit the use
327 of a nonpreferred water supply source. Rules adopted by the
328 governing board of a water management district to implement this
329 section shall specify that the use of a preferred water supply

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330 source is not required and that the use of a nonpreferred water
331 supply source is not restricted or prohibited.

332 Section 7. Present subsections (2) and (3) of section
333 373.236, Florida Statutes, are renumbered as subsections (3) and
334 (4), respectively, present subsection (4) is renumbered as
335 subsection (5) and amended, and a new subsection (2) is added to
336 that section, to read:

337 373.236 Duration of permits; compliance reports.--

338 (2) The Legislature finds that some agricultural
339 landowners remain unaware of their ability to request a 20-year
340 consumptive use permit under subsection (1) for initial permits
341 or for renewals. Therefore, the water management districts shall
342 inform agricultural applicants of this option in the application
343 form.

344 (5)~~(4)~~ Permits approved for the development of alternative
345 water supplies shall be granted for a term of at least 20 years.
346 However, if the permittee issues bonds for the construction of
347 the project, upon request of the permittee prior to the
348 expiration of the permit, that permit shall be extended for such
349 additional time as is required for the retirement of bonds, not
350 including any refunding or refinancing of such bonds, provided
351 that the governing board determines that the use will continue
352 to meet the conditions for the issuance of the permit. Such a
353 permit is subject to compliance reports under subsection (4)~~(3)~~.

354 Section 8. Section 373.407, Florida Statutes, is created
355 to read:

356 373.407 Memorandum of agreement for an agricultural-
357 related exemption.--No later than July 1, 2007, the Department

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358 | of Agriculture and Consumer Services and each water management
359 | district shall enter into a memorandum of agreement under which
360 | the Department of Agricultural and Consumer Services shall
361 | assist in a determination by a water management district as to
362 | whether an existing or proposed activity qualifies for the
363 | exemption in s. 373.406(2). The memorandum of agreement shall
364 | provide a process by which, upon the request of a water
365 | management district, the Department of Agriculture and Consumer
366 | Services shall conduct a nonbinding review as to whether an
367 | existing or proposed activity qualifies for an agricultural-
368 | related exemption in s. 373.406(2). The memorandum of agreement
369 | shall provide processes and procedures by which the Department
370 | of Agriculture and Consumer Services shall undertake this review
371 | effectively and efficiently and issue a recommendation.

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