

## CHAMBER ACTION

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1 The Agriculture & Environment Appropriations Committee  
2 recommends the following:

**Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

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

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

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

39 70.001 Private property rights protection.--

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 | governmental entity to whom a claim is presented, requires the  
 53 | active participation of more than one governmental entity, the  
 54 | property owner shall present the claim as provided in this  
 55 | section to each of the governmental entities.

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

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

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

64 | 3. The transfer of developmental rights.

65 | 4. Land swaps or exchanges.

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

68 | 6. Location on the least sensitive portion of the  
 69 | property.

70 | 7. Conditioning the amount of development or use  
 71 | permitted.

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

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

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

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

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

100 |       (6)

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

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

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

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

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

138 163.3162 Agricultural Lands and Practices Act.--

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

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

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

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

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

- 184            1. The Wekiva Study Area, as described in s. 369.316; or  
185            2. The Everglades Protection Area, as defined in s.  
186 373.4592(2).

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

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

191           (33) "Agricultural enclave" means an unincorporated,  
 192 undeveloped parcel that:  
 193           (a) Is owned by a single person or entity;  
 194           (b) Has been in continuous use for bona fide agricultural  
 195 purposes, as defined by s. 193.461, for a period of 5 years  
 196 prior to the date of any comprehensive plan amendment  
 197 application;  
 198           (c) Is surrounded on at least 75 percent of its perimeter  
 199 by:  
 200           1. Property that has existing industrial, commercial, or  
 201 residential development; or  
 202           2. Property that the local government has designated, in  
 203 the local government's comprehensive plan, zoning map, and  
 204 future land use map, as land that is to be developed for  
 205 industrial, commercial, or residential purposes, and at least 75  
 206 percent of such property is existing industrial, commercial, or  
 207 residential development;  
 208           (d) Has public services, including water, wastewater,  
 209 transportation, schools, and recreation facilities, available or  
 210 such public services are scheduled to be provided by the local  
 211 government or by an alternative provider of local government  
 212 infrastructure consistent with applicable concurrency provisions  
 213 of s. 163.3180; and  
 214           (e) Does not exceed 2,560 acres; however, if the property  
 215 has existing or authorized residential development that will  
 216 result in a density at buildout of at least 1,000 residents per  
 217 square mile, then the area shall be determined to be urban and  
 218 the parcel may not exceed 5,120 acres.



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219 Section 4. Section 259.047, Florida Statutes, is created  
220 to read:

221 259.047 Acquisition of land on which an agricultural lease  
222 exists.--

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

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

234 Section 5. Paragraph (a) of subsection (2) of section  
235 373.0361, Florida Statutes, is amended to read:

236 373.0361 Regional water supply planning.--

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

240 (a) A water supply development component for each water  
241 supply planning region identified by the district which  
242 includes:

243 1. A quantification of the water supply needs for all  
244 existing and future reasonable-beneficial uses within the  
245 planning horizon. The level-of-certainty planning goal  
246 associated with identifying the water supply needs of existing

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247 and future reasonable-beneficial uses shall be based upon  
248 meeting those needs for a 1-in-10-year drought event. Population  
249 projections used for determining public water supply needs must  
250 be based upon the best available data. In determining the best  
251 available data, the district shall consider the University of  
252 Florida's Bureau of Economic and Business Research (BEBR) medium  
253 population projections and any population projection data and  
254 analysis submitted by a local government pursuant to the public  
255 workshop described in subsection (1) if the data and analysis  
256 support the local government's comprehensive plan. Any  
257 adjustment of or deviation from the BEBR projections must be  
258 fully described, and the original BEBR data must be presented  
259 along with the adjusted data.

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

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275 | constraints, including adopted minimum flows and levels and  
276 | water reservations. Where the district determines it is  
277 | appropriate, the plan should specifically identify the need for  
278 | multijurisdictional approaches to project options that, based on  
279 | planning level analysis, are appropriate to supply the intended  
280 | uses and that, based on such analysis, appear to be permissible  
281 | and financially and technically feasible. The list of water  
282 | supply development options must contain provisions that  
283 | recognize that alternative water supply options for agricultural  
284 | self-suppliers are limited.

285 |         3. For each project option identified in subparagraph 2.,  
286 | the following shall be provided:

287 |         a. An estimate of the amount of water to become available  
288 | through the project.

289 |         b. The timeframe in which the project option should be  
290 | implemented and the estimated planning-level costs for capital  
291 | investment and operating and maintaining the project.

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

296 |         d. Identification of the entity that should implement each  
297 | project option and the current status of project implementation.

298 |         Section 6. Section 373.2234, Florida Statutes, is amended  
299 | to read:

300 |         373.2234 Preferred water supply sources.--The governing  
301 | board of a water management district is authorized to adopt  
302 | rules that identify preferred water supply sources for

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

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331 governing board of a water management district to implement this  
 332 section shall specify that the use of a preferred water supply  
 333 source is not required and that the use of a nonpreferred water  
 334 supply source is not restricted or prohibited.

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

340 373.236 Duration of permits; compliance reports.--

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

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

357 Section 8. Section 373.407, Florida Statutes, is created  
 358 to read:

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359        373.407 Memorandum of agreement for an agricultural-  
360 related exemption.--No later than July 1, 2007, the Department  
361 of Agriculture and Consumer Services and each water management  
362 district shall enter into a memorandum of agreement under which  
363 the Department of Agricultural and Consumer Services shall  
364 assist in a determination by a water management district as to  
365 whether an existing or proposed activity qualifies for the  
366 exemption in s. 373.406(2). The memorandum of agreement shall  
367 provide a process by which, upon the request of a water  
368 management district, the Department of Agriculture and Consumer  
369 Services shall conduct a nonbinding review as to whether an  
370 existing or proposed activity qualifies for an agricultural-  
371 related exemption in s. 373.406(2). The memorandum of agreement  
372 shall provide processes and procedures by which the Department  
373 of Agriculture and Consumer Services shall undertake this review  
374 effectively and efficiently and issue a recommendation.

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