CHAMBER ACTION

1 The State Resources Council 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

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

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.
78

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 <u>90-day-notice period or the</u> 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 <u>applicable 90-day-notice period or</u> 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

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.

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. Each application for a comprehensive plan
147 amendment under this subsection for a parcel larger than 640
148 acres must include appropriate new urbanism concepts such as
149 clustering, mixed-use development, the creation of rural village
150 and city centers, and the transfer of development rights in
151 order to discourage urban sprawl while protecting landowner
152 rights.
153 (a) The local government and the owner of a parcel of land
154 that is the subject of an application for an amendment shall
155 have 180 days following the date that the local government
156 receives a complete application to negotiate in good faith to
157 reach consensus on the land uses and intensities of use that are
158 consistent with the uses and intensities of use of the
159 industrial, commercial, or residential areas that surround the
160 parcel. Within 30 days after the local government's receipt of
161 such an application, the local government and owner must agree
162 in writing to a schedule for information submittal, public

163 hearings, negotiations, and final action on the amendment, which
164 schedule may thereafter be altered only with the written consent
165 of the local government and the owner. Compliance with the
166 schedule in the written agreement constitutes good-faith
167 negotiations for purposes of paragraph (c).
168 (b) Upon conclusion of good-faith negotiations under
169 paragraph (a), regardless of whether the local government and
170 owner reach consensus on the land uses and intensities of use
171 that are consistent with the uses and intensities of use of the
172 industrial, commercial, or residential areas that surround the
173 parcel, the amendment must be transmitted to the state land
174 planning agency for review pursuant to s. 163.3184. If the local
175 government fails to transmit the amendment within 180 days after
176 receipt of a complete application, the amendment must be
177 immediately transferred to the state land planning agency for
178 such review at the first available transmittal cycle. The state
179 land planning agency may not use any provision of rule 9J-
180 5.006(5), Florida Administrative Code, as a factor in
181 determining compliance of an amendment.
182 (c) If the owner fails to negotiate in good faith, rule
183 9J-5.006(5), Florida Administrative Code, shall apply throughout
184 the negotiation and amendment process.
185 (d) Nothing within this subsection relating to
186 agricultural enclaves shall preempt or replace any protection
187 currently existing for any property located within the
188 boundaries of the following areas:
189 1. The Wekiva Study Area, as described in s. 369.316; or

190 2. The Everglades Protection Area, as defined in s.
191 373.4592(2).
192 Section 3. Subsection (33) is added to section 163.3164,
193 Florida Statutes, to read:
194 163.3164 Local Government Comprehensive Planning and Land
195 Development Regulation Act; definitions.--As used in this act:
196 (33) "Agricultural enclave" means an unincorporated,
197 undeveloped parcel that:
198 (a) Is owned by a single person or entity;
199 (b) Has been in continuous use for bona fide agricultural
200 purposes, as defined by s. 193.461, for a period of 5 years
201 prior to the date of any comprehensive plan amendment
202 application;
203 (c) Is surrounded on at least 75 percent of its perimeter
204 by:
205 1. Property that has existing industrial, commercial, or
206 residential development; or
207 2. Property that the local government has designated, in
208 the local government's comprehensive plan, zoning map, and
209 future land use map, as land that is to be developed for
210 industrial, commercial, or residential purposes, and at least 75
211 percent of such property is existing industrial, commercial, or
212 residential development;
213 (d) Has public services, including water, wastewater,
214 transportation, schools, and recreation facilities, available or
215 such public services are scheduled in the capital improvement
216 element to be provided by the local government or can be
217 provided by an alternative provider of local government

218 infrastructure in order to ensure consistency with applicable
219 concurrency provisions of s. 163.3180; and
220 (e) Does not exceed 2,560 acres; however, if the property
221 is surrounded by existing or authorized residential development
222 that will result in a density at buildout of at least 1,000
223 residents per square mile, then the area shall be determined to
224 be urban and the parcel may not exceed 5,120 acres.
225 Section 4. Section 259.047, Florida Statutes, is created
226 to read:
227 259.047 Acquisition of land on which an agricultural lease
228 exists.--
229 (1) When land with an existing agricultural lease is
230 acquired in fee simple pursuant to this chapter or chapter 375,
231 the existing agricultural lease may continue in force for the
232 actual time remaining on the lease agreement. Any entity
233 managing lands acquired under this section must consider
234 existing agricultural leases in the development of a land
235 management plan required under s. 253.034.
236 (2) Where consistent with the purposes for which the
237 property was acquired, the state or acquiring entity shall make
238 reasonable efforts to keep lands in agricultural production
239 which are in agricultural production at the time of acquisition.
240 Section 5. Paragraph (a) of subsection (2) of section
241 373.0361, Florida Statutes, is amended to read:
242 373.0361 Regional water supply planning.--
243 (2) Each regional water supply plan shall be based on at
244 least a 20-year planning period and shall include, but need not
245 be limited to:

246 (a) A water supply development component for each water
247 supply planning region identified by the district which
248 includes:
249 1. A quantification of the water supply needs for all
250 existing and future reasonable-beneficial uses within the
251 planning horizon. The level-of-certainty planning goal
252 associated with identifying the water supply needs of existing
253 and future reasonable-beneficial uses shall be based upon
254 meeting those needs for a 1-in-10-year drought event. Population
255 projections used for determining public water supply needs must
256 be based upon the best available data. In determining the best
257 available data, the district shall consider the University of
258 Florida's Bureau of Economic and Business Research (BEBR) medium
259 population projections and any population projection data and
260 analysis submitted by a local government pursuant to the public
261 workshop described in subsection (1) if the data and analysis
262 support the local government's comprehensive plan. Any
263 adjustment of or deviation from the BEBR projections must be
264 fully described, and the original BEBR data must be presented
265 along with the adjusted data.
266 2. A list of water supply development project options,
267 including traditional and alternative water supply project
268 options, from which local government, government-owned and
269 privately owned utilities, regional water supply authorities,
270 multijurisdictional water supply entities, self-suppliers, and
271 others may choose for water supply development. In addition to
272 projects listed by the district, such users may propose specific
273 projects for inclusion in the list of alternative water supply

274 projects. If such users propose a project to be listed as an
275 alternative water supply project, the district shall determine
276 whether it meets the goals of the plan, and, if so, it shall be
277 included in the list. The total capacity of the projects
278 included in the plan shall exceed the needs identified in
279 subparagraph 1. and shall take into account water conservation
280 and other demand management measures, as well as water resources
281 constraints, including adopted minimum flows and levels and
282 water reservations. Where the district determines it is
283 appropriate, the plan should specifically identify the need for
284 multijurisdictional approaches to project options that, based on
285 planning level analysis, are appropriate to supply the intended
286 uses and that, based on such analysis, appear to be permittable
287 and financially and technically feasible. <u>The list of water</u>
288 <u>supply development options must contain provisions that</u>
289 <u>recognize that alternative water supply options for agricultural</u>
290 <u>self-suppliers are limited.</u>
291 3. For each project option identified in subparagraph 2.,
292 the following shall be provided:
293 a. An estimate of the amount of water to become available
294 through the project.
295 b. The timeframe in which the project option should be
296 implemented and the estimated planning-level costs for capital
297 investment and operating and maintaining the project.
298 c. An analysis of funding needs and sources of possible
299 funding options. For alternative water supply projects the water
300 management districts shall provide funding assistance in
301 accordance with s. 373.1961(3).

302 d. Identification of the entity that should implement each
303 project option and the current status of project implementation.
304 Section 6. Section 373.2234, Florida Statutes, is amended
305 to read:
306 373.2234 Preferred water supply sources.--The governing
307 board of a water management district is authorized to adopt
308 rules that identify preferred water supply sources for
309 consumptive uses for which there is sufficient data to establish
310 that a preferred source will provide a substantial new water
311 supply to meet the existing and projected reasonable-beneficial
312 uses of a water supply planning region identified pursuant to s.
313 373.0361(1), while sustaining existing water resources and
314 natural systems. At a minimum, such rules must contain a
315 description of the preferred water supply source and an
316 assessment of the water the preferred source is projected to
317 produce. If an applicant proposes to use a preferred water
318 supply source, that applicant's proposed water use is subject to
319 s. 373.223(1), except that the proposed use of a preferred water
320 supply source must be considered by a water management district
321 when determining whether a permit applicant's proposed use of
322 water is consistent with the public interest pursuant to s.
323 373.223(1)(c). A consumptive use permit issued for the use of a
324 preferred water supply source must be granted, when requested by
325 the applicant, for at least a 20-year period and may be subject
326 to the compliance reporting provisions of s. 373.236<u>(4)</u>~~(3)~~.
327 Nothing in this section shall be construed to exempt the use of
328 preferred water supply sources from the provisions of ss.
329 373.016(4) and 373.223(2) and (3), or be construed to provide

330 that permits issued for the use of a nonpreferred water supply
331 source must be issued for a duration of less than 20 years or
332 that the use of a nonpreferred water supply source is not
333 consistent with the public interest. Additionally, nothing in
334 this section shall be interpreted to require the use of a
335 preferred water supply source or to restrict or prohibit the use
336 of a nonpreferred water supply source. Rules adopted by the
337 governing board of a water management district to implement this
338 section shall specify that the use of a preferred water supply
339 source is not required and that the use of a nonpreferred water
340 supply source is not restricted or prohibited.
341 Section 7. Present subsections (2) and (3) of section
342 373.236, Florida Statutes, are renumbered as subsections (3) and
343 (4), respectively, present subsection (4) is renumbered as
344 subsection (5) and amended, and a new subsection (2) is added to
345 that section, to read:
346 373.236 Duration of permits; compliance reports.--
347 (2) The Legislature finds that some agricultural
348 landowners remain unaware of their ability to request a 20-year
349 consumptive use permit under subsection (1) for initial permits
350 or for renewals. Therefore, the water management districts shall
351 inform agricultural applicants of this option in the application
352 form.
353 (5) ~~(4)~~ Permits approved for the development of alternative
354 water supplies shall be granted for a term of at least 20 years.
355 However, if the permittee issues bonds for the construction of
356 the project, upon request of the permittee prior to the
357 expiration of the permit, that permit shall be extended for such

358 additional time as is required for the retirement of bonds, not
359 including any refunding or refinancing of such bonds, provided
360 that the governing board determines that the use will continue
361 to meet the conditions for the issuance of the permit. Such a
362 permit is subject to compliance reports under subsection (4) ~~(3)~~.
363 Section 8. Section 373.407, Florida Statutes, is created
364 to read:
365 373.407 Memorandum of agreement for an agricultural-
366 related exemption.--No later than July 1, 2007, the Department
367 of Agriculture and Consumer Services and each water management
368 district shall enter into a memorandum of agreement under which
369 the Department of Agricultural and Consumer Services shall
370 assist in a determination by a water management district as to
371 whether an existing or proposed activity qualifies for the
372 exemption in s. 373.406(2). The memorandum of agreement shall
373 provide a process by which, upon the request of a water
374 management district, the Department of Agriculture and Consumer
375 Services shall conduct a nonbinding review as to whether an
376 existing or proposed activity qualifies for an agricultural-
377 related exemption in s. 373.406(2). The memorandum of agreement
378 shall provide processes and procedures by which the Department
379 of Agriculture and Consumer Services shall undertake this review
380 effectively and efficiently and issue a recommendation.
381 Section 9. This act shall take effect upon becoming a law.