

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.

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

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

70.001 Private property rights protection.--

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

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

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 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  
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  
 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.--The  
 135 owner of a parcel of land defined as an agricultural enclave

136 under s. 163.3164(33) may apply for an amendment to the local  
137 government comprehensive plan pursuant to s. 163.3187. Such  
138 amendment is not subject to rule 9J-5.006(5), Florida  
139 Administrative Code, and may include land uses and intensities  
140 of use that are consistent with the uses and intensities of use  
141 of the industrial, commercial, or residential areas that  
142 surround the parcel. Each application for a comprehensive plan  
143 amendment under this subsection for a parcel larger than 640  
144 acres must include appropriate new urbanism concepts such as  
145 clustering, mixed-use development, the creation of rural village  
146 and city centers, and the transfer of development rights in  
147 order to discourage urban sprawl while protecting landowner  
148 rights.

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

162 schedule in the written agreement constitutes good-faith  
163 negotiations for purposes of paragraph (c).

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

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

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

- 185 1. The Wekiva Study Area, as described in s. 369.316; or
- 186 2. The Everglades Protection Area, as defined in s.  
187 373.4592(2).

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

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

192 (33) "Agricultural enclave" means an unincorporated,  
 193 undeveloped parcel that:

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

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

199 (c) Excluding any portion of the property perimeter, not  
 200 to exceed 40 percent, that is contiguous to lands owned by any  
 201 federal, state, regional, or local government or quasi-  
 202 governmental entity, is surrounded on at least 75 percent of its  
 203 perimeter by:

204 1. Property that has existing industrial, commercial, or  
 205 residential development; or

206 2. Property that the local government has designated, in  
 207 the local government's comprehensive plan, zoning map, and  
 208 future land use map, as land that is to be developed for  
 209 industrial, commercial, or residential purposes, and at least 75  
 210 percent of such property is existing industrial, commercial, or  
 211 residential development;

212 (d) Has public services, including water, wastewater,  
 213 transportation, schools, and recreation facilities, available or  
 214 such public services are scheduled in the capital improvement

215 element to be provided by the local government or can be  
216 provided by an alternative provider of local government  
217 infrastructure in order to ensure consistency with applicable  
218 concurrency provisions of s. 163.3180; and

219 (e) Does not exceed 1,280 acres; however, if the property  
220 is surrounded by existing or authorized residential development  
221 that will result in a density at buildout of at least 1,000  
222 residents per square mile, or is within an area for which the  
223 state land planning agency has previously authorized the  
224 preparation of an option sector plan pursuant to s. 163.3245,  
225 then the area shall be determined to be urban and the parcel may  
226 not exceed 5,120 acres.

227 Section 4. Section 259.047, Florida Statutes, is created  
228 to read:

229 259.047 Acquisition of land on which an agricultural lease  
230 exists.--

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

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

242 Section 5. Paragraph (a) of subsection (2) of section  
243 373.0361, Florida Statutes, is amended to read:

244 373.0361 Regional water supply planning.--

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

248 (a) A water supply development component for each water  
249 supply planning region identified by the district which  
250 includes:

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

268           2. A list of water supply development project options,  
269 including traditional and alternative water supply project  
270 options, from which local government, government-owned and  
271 privately owned utilities, regional water supply authorities,  
272 multijurisdictional water supply entities, self-suppliers, and  
273 others may choose for water supply development. In addition to  
274 projects listed by the district, such users may propose specific  
275 projects for inclusion in the list of alternative water supply  
276 projects. If such users propose a project to be listed as an  
277 alternative water supply project, the district shall determine  
278 whether it meets the goals of the plan, and, if so, it shall be  
279 included in the list. The total capacity of the projects  
280 included in the plan shall exceed the needs identified in  
281 subparagraph 1. and shall take into account water conservation  
282 and other demand management measures, as well as water resources  
283 constraints, including adopted minimum flows and levels and  
284 water reservations. Where the district determines it is  
285 appropriate, the plan should specifically identify the need for  
286 multijurisdictional approaches to project options that, based on  
287 planning level analysis, are appropriate to supply the intended  
288 uses and that, based on such analysis, appear to be permissible  
289 and financially and technically feasible. The list of water  
290 supply development options must contain provisions that  
291 recognize that alternative water supply options for agricultural  
292 self-suppliers are limited.

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

295 |           a. An estimate of the amount of water to become available  
296 | through the project.

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

300 |           c. An analysis of funding needs and sources of possible  
301 | funding options. For alternative water supply projects the water  
302 | management districts shall provide funding assistance in  
303 | accordance with s. 373.1961(3).

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

306 |           Section 6. Section 373.2234, Florida Statutes, is amended  
307 | to read:

308 |           373.2234 Preferred water supply sources.--The governing  
309 | board of a water management district is authorized to adopt  
310 | rules that identify preferred water supply sources for  
311 | consumptive uses for which there is sufficient data to establish  
312 | that a preferred source will provide a substantial new water  
313 | supply to meet the existing and projected reasonable-beneficial  
314 | uses of a water supply planning region identified pursuant to s.  
315 | 373.0361(1), while sustaining existing water resources and  
316 | natural systems. At a minimum, such rules must contain a  
317 | description of the preferred water supply source and an  
318 | assessment of the water the preferred source is projected to  
319 | produce. If an applicant proposes to use a preferred water  
320 | supply source, that applicant's proposed water use is subject to  
321 | s. 373.223(1), except that the proposed use of a preferred water

322 supply source must be considered by a water management district  
323 when determining whether a permit applicant's proposed use of  
324 water is consistent with the public interest pursuant to s.  
325 373.223(1)(c). A consumptive use permit issued for the use of a  
326 preferred water supply source must be granted, when requested by  
327 the applicant, for at least a 20-year period and may be subject  
328 to the compliance reporting provisions of s. 373.236(4)~~(3)~~.  
329 Nothing in this section shall be construed to exempt the use of  
330 preferred water supply sources from the provisions of ss.  
331 373.016(4) and 373.223(2) and (3), or be construed to provide  
332 that permits issued for the use of a nonpreferred water supply  
333 source must be issued for a duration of less than 20 years or  
334 that the use of a nonpreferred water supply source is not  
335 consistent with the public interest. Additionally, nothing in  
336 this section shall be interpreted to require the use of a  
337 preferred water supply source or to restrict or prohibit the use  
338 of a nonpreferred water supply source. Rules adopted by the  
339 governing board of a water management district to implement this  
340 section shall specify that the use of a preferred water supply  
341 source is not required and that the use of a nonpreferred water  
342 supply source is not restricted or prohibited.

343 Section 7. Present subsections (2) and (3) of section  
344 373.236, Florida Statutes, are renumbered as subsections (3) and  
345 (4), respectively, present subsection (4) is renumbered as  
346 subsection (5) and amended, and a new subsection (2) is added to  
347 that section, to read:

348 373.236 Duration of permits; compliance reports.--

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

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

365       Section 8. Section 373.407, Florida Statutes, is created  
 366 to read:

367       373.407 Memorandum of agreement for an agricultural-  
 368 related exemption.--No later than July 1, 2007, the Department  
 369 of Agriculture and Consumer Services and each water management  
 370 district shall enter into a memorandum of agreement under which  
 371 the Department of Agricultural and Consumer Services shall  
 372 assist in a determination by a water management district as to  
 373 whether an existing or proposed activity qualifies for the  
 374 exemption in s. 373.406(2). The memorandum of agreement shall  
 375 provide a process by which, upon the request of a water

376 | management district, the Department of Agriculture and Consumer  
377 | Services shall conduct a nonbinding review as to whether an  
378 | existing or proposed activity qualifies for an agricultural-  
379 | related exemption in s. 373.406(2). The memorandum of agreement  
380 | shall provide processes and procedures by which the Department  
381 | of Agriculture and Consumer Services shall undertake this review  
382 | effectively and efficiently and issue a recommendation.

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