A bill to be entitled

An act relating to agricultural economic development; amending s. 70.001, F.S.; providing a deadline for an owner of agricultural land to present a claim prior to filing an action against a governmental entity regarding private property rights; amending s. 163.3162, F.S.; providing for application for an amendment to the local government comprehensive plan by the owner of land that meets certain provisions of the definition of an agricultural enclave; providing requirements relating to such applications; creating a rebuttable presumption relating to certain requirements for plan amendment for agricultural enclaves; providing for the transmittal of a plan amendment relating to an agricultural enclave to the state land planning agency; providing for a rebuttal presumption for plan amendments relating to agricultural enclaves; providing an exception; amending s. 163.3164, F.S.; defining the term "agricultural enclave" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act; creating s. 259.047, F.S.; providing requirements relating to the purchase of land on which an agricultural lease exists; amending s. 373.0361, F.S.; providing for recognition that alternative water supply development options for agricultural self-suppliers are limited; amending s. 373.2234, F.S.; conforming a cross-reference; amending s. 373.236, F.S.; requiring water management districts to inform landowners

of the option to obtain certain consumptive use permits; creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions; amending s. 601.992, F.S.; authorizing the Department of Citrus or the Department of Agriculture and Consumer Services to collect financial payments for certain not-for-profit entities under certain circumstances; authorizing fees and rulemaking; providing an effective date.

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:

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

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

3. The transfer of developmental rights.

4. Land swaps or exchanges.

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

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

7. Conditioning the amount of development or use permitted.

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

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

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

11. No changes to the action of the governmental entity.

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

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

(6)

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their

proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the settlement offer, including the ripeness decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

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

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ripeness decision, except for the final written settlement offer or the final written ripeness decision, and any negotiations or rejections in regard to the formulation either

of the settlement offer or the ripeness decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

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

163.3162 Agricultural Lands and Practices Act.--

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33) may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is presumed to be consistent with rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. This presumption may be rebutted by clear and convincing evidence. Each application for a comprehensive plan amendment under this subsection for a parcel larger than 640 acres must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights.

(a) The local government and the owner of a parcel of land that is the subject of an application for an amendment shall have 180 days following the date that the local government receives a complete application to negotiate in good faith to

reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Compliance with the schedule in the written agreement constitutes good-faith negotiations for purposes of paragraph (c).

(b) Upon conclusion of good-faith negotiations under paragraph (a), regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of a complete application, the amendment must be immediately transferred to the state land planning agency for such review at the first available transmittal cycle. A plan amendment transmitted to the state land planning agency submitted under this subsection is presumed to be consistent with rule 9J-5.006(5), Florida Administrative Code. This presumption may be rebutted by clear and convincing evidence.

(c) If the owner fails to negotiate in good faith, a plan amendment submitted under this subsection is not entitled to the rebuttable presumption under this subsection in the negotiation and amendment process.

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

1. The Wekiva Study Area, as described in s. 369.316; or

2. The Everglades Protection Area, as defined in s. 373.4592(2).

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

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

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

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

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

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

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

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

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of s. 163.3180; and

(e) Does not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.

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

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

(1) When land with an existing agricultural lease is acquired in fee simple pursuant to this chapter or chapter 375, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider

existing agricultural leases in the development of a land management plan required under s. 253.034.

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

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

373.0361 Regional water supply planning.--

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

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

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public

workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan shall exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water

supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

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

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

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

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

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

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

373.2234 Preferred water supply sources.--The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a

description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by the applicant, for at least a 20-year period and may be subject to the compliance reporting provisions of s. 373.236(4) ~~(3)~~. Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(2) and (3), or be construed to provide that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

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

373.236 Duration of permits; compliance reports.--

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

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

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

373.407 Memorandum of agreement for an agricultural-related exemption.--No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management

district shall enter into a memorandum of agreement under which the Department of Agricultural and Consumer Services shall assist in a determination by a water management district as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the request of a water management district, the Department of Agriculture and Consumer Services shall conduct a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). The memorandum of agreement shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake this review effectively and efficiently and issue a recommendation.

Section 9. Section 601.992, Florida Statutes, is amended to read:

601.992 Collection of dues and other payments on behalf of certain nonprofit corporations engaged in market news and grower education.--The Florida Department of Citrus or the Department of Agriculture and Consumer Services or their successors ~~its successor~~ may collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation, and its related not-for-profit corporations, located in this state which receives payments or dues from its members. Such not-for-profit corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in

growing citrus in this state for commercial sale. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation which are sufficient but do not exceed the amount necessary to ensure that any direct costs incurred by the department in implementing this section are borne by the requesting corporation and not by the department.

Section 10. This act shall take effect upon becoming a law.