

1 regarding qualification for
2 agricultural-related exemptions; providing an
3 effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Paragraphs (a) and (c) of subsection (4),
8 paragraph (a) of subsection (5), and paragraph (c) of
9 subsection (6) of section 70.001, Florida Statutes, are
10 amended to read:

11 70.001 Private property rights protection.--

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

29 (c) During the 90-day-notice period or the
30 180-day-notice period, unless extended by agreement of the
31

1 parties, the governmental entity shall make a written
2 settlement offer to effectuate:

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

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

8 3. The transfer of developmental rights.

9 4. Land swaps or exchanges.

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

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

14 7. Conditioning the amount of development or use
15 permitted.

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

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

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

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

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

30 (5)(a) During the 90-day-notice period or the
31 180-day-notice period, unless a settlement offer is accepted

1 | by the property owner, each of the governmental entities
2 | provided notice pursuant to paragraph (4)(a) shall issue a
3 | written ripeness decision identifying the allowable uses to
4 | which the subject property may be put. The failure of the
5 | governmental entity to issue a written ripeness decision
6 | during the applicable 90-day-notice period or 180-day-notice
7 | period shall be deemed to ripen the prior action of the
8 | governmental entity, and shall operate as a ripeness decision
9 | that has been rejected by the property owner. The ripeness
10 | decision, as a matter of law, constitutes the last
11 | prerequisite to judicial review, and the matter shall be
12 | deemed ripe or final for the purposes of the judicial
13 | proceeding created by this section, notwithstanding the
14 | availability of other administrative remedies.

15 | (6)

16 | (c)1. In any action filed pursuant to this section,
17 | the property owner is entitled to recover reasonable costs
18 | and attorney fees incurred by the property owner, from the
19 | governmental entity or entities, according to their
20 | proportionate share as determined by the court, from the date
21 | of the filing of the circuit court action, if the property
22 | owner prevails in the action and the court determines that the
23 | settlement offer, including the ripeness decision, of the
24 | governmental entity or entities did not constitute a bona fide
25 | offer to the property owner which reasonably would have
26 | resolved the claim, based upon the knowledge available to the
27 | governmental entity or entities and the property owner during
28 | the 90-day-notice period or the 180-day-notice period.

29 | 2. In any action filed pursuant to this section, the
30 | governmental entity or entities are entitled to recover
31 | reasonable costs and attorney's ~~attorney~~ fees incurred by the

1 governmental entity or entities from the date of the filing of
2 the circuit court action, if the governmental entity or
3 entities prevail in the action and the court determines that
4 the property owner did not accept a bona fide settlement
5 offer, including the ripeness decision, which reasonably would
6 have resolved the claim fairly to the property owner if the
7 settlement offer had been accepted by the property owner,
8 based upon the knowledge available to the governmental entity
9 or entities and the property owner during the 90-day-notice
10 period or the 180-day-notice period.

11 3. The determination of total reasonable costs and
12 attorney's ~~attorney~~ fees pursuant to this paragraph shall be
13 made by the court and not by the jury. Any proposed settlement
14 offer or any proposed ripeness decision, except for the final
15 written settlement offer or the final written ripeness
16 decision, and any negotiations or rejections in regard to the
17 formulation either of the settlement offer or the ripeness
18 decision, are inadmissible in the subsequent proceeding
19 established by this section except for the purposes of the
20 determination pursuant to this paragraph.

21 Section 2. Subsection (5) is added to section
22 163.3162, Florida Statutes, to read:

23 163.3162 Agricultural Lands and Practices Act.--

24 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE
25 PLAN.--

26 (a) The owner of a parcel of land defined as an
27 agricultural enclave under s. 163.3164(33)(e)1. may apply for
28 an amendment to the local government comprehensive plan
29 pursuant to s. 163.3187. Such amendment is not subject to rule
30 9J-5.006(5), Florida Administrative Code, and may include land
31 uses and intensities of use that are consistent with the uses

1 and intensities of use of the industrial, commercial, or
2 residential areas that surround the parcel. The local
3 government shall make a determination regarding transmittal of
4 such amendment within 120 days after receipt of a complete
5 application for the amendment and transmit the amendment to
6 the state land planning agency for review pursuant to s.
7 163.3184 at the first available transmittal cycle. The state
8 land planning agency may not use any provision of rule
9 9J-5.006(5), Florida Administrative Code, as a factor in
10 determining compliance of an amendment under this paragraph.

11 (b) In order to preserve commercial agricultural
12 activity, encourage mixed-use infill development, prevent
13 urban sprawl, and provide more efficient delivery of municipal
14 services and facilities, the owner of a parcel of land defined
15 as an agricultural enclave under s. 163.3164(33)(e)2. may
16 apply for an amendment to the local government comprehensive
17 plan pursuant to s. 163.3187. Such amendment is not subject to
18 rule 9J-5.006(5), Florida Administrative Code, and may include
19 land uses and intensities of use that are consistent with the
20 uses and intensities of use of the industrial, commercial, or
21 residential areas that surround the parcel.

22 1. The local government and the owner of a parcel of
23 land that is the subject of an application for an amendment
24 under this paragraph shall have 180 days following the date
25 that the local government receives a complete application to
26 negotiate in good faith to reach consensus on the land uses
27 and intensities of use that are consistent with the uses and
28 intensities of use of the industrial, commercial, or
29 residential areas that surround the parcel. Within 30 days
30 after the local government's receipt of such an application,
31 the local government and owner must agree in writing to a

1 schedule for information submittal, public hearings,
2 negotiations, and final action on the amendment, which
3 schedule may thereafter be altered only with the written
4 consent of the local government and the owner. Compliance with
5 the schedule in the written agreement constitutes good-faith
6 negotiations for purposes of subparagraph 3.

7 2. Upon conclusion of good-faith negotiations under
8 subparagraph 1., regardless of whether the local government
9 and owner reach consensus on the land uses and intensities of
10 use that are consistent with the uses and intensities of use
11 of the industrial, commercial, or residential areas that
12 surround the parcel, the amendment must be transmitted to the
13 state land planning agency for review pursuant to s. 163.3184.
14 If the local government fails to transmit the amendment within
15 180 days after receipt of a complete application, the
16 amendment must be immediately transferred to the state land
17 planning agency for such review at the first available
18 transmittal cycle. The state land planning agency may not use
19 any provision of rule 9J-5.006(5), Florida Administrative
20 Code, as a factor in determining compliance of an amendment
21 under this paragraph.

22 3. If the owner fails to negotiate in good faith, rule
23 9J-5.006(5), Florida Administrative Code, shall apply
24 throughout the negotiation and amendment process under this
25 paragraph.

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

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

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

3 Section 3. Subsection (33) is added to section
4 163.3164, Florida Statutes, to read:

5 163.3164 Local Government Comprehensive Planning and
6 Land Development Regulation Act; definitions.--As used in this
7 act:

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

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

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

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

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

19 2. Property that the local government has designated,
20 in the local government's comprehensive plan, zoning map, and
21 future land use map, as land that is to be developed for
22 industrial, commercial, or residential purposes, and at least
23 75 percent of such property is existing industrial,
24 commercial, or residential development;

25 (d) Has public services, including water, wastewater,
26 transportation, schools, and recreation facilities, available
27 or such public services are scheduled to be provided as part
28 of a financially feasible 5-year schedule of capital
29 improvements that is adopted by the local government or by an
30 alternative provider of local government infrastructure; and

31 (e) Satisfies one of the following acreage criteria:

1 1. The parcel may not exceed 640 acres; or

2 2. The parcel may not exceed 2,560 acres.

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

5 259.047 Acquisition of land on which an agricultural
6 lease exists.--

7 (1) When land with an existing agricultural lease is
8 acquired in fee simple pursuant to this chapter or chapter
9 375, the existing agricultural lease may continue in force for
10 the actual time remaining on the lease agreement. Any entity
11 managing lands acquired under this section must consider
12 existing agricultural leases in the development of a land
13 management plan required under s. 253.034.

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

19 Section 5. Paragraph (a) of subsection (2) of section
20 373.0361, Florida Statutes, is amended to read:

21 373.0361 Regional water supply planning.--

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

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

28 1. A quantification of the water supply needs for all
29 existing and future reasonable-beneficial uses within the
30 planning horizon. The level-of-certainty planning goal
31 associated with identifying the water supply needs of existing

1 and future reasonable-beneficial uses shall be based upon
2 meeting those needs for a 1-in-10-year drought event.
3 Population projections used for determining public water
4 supply needs must be based upon the best available data. In
5 determining the best available data, the district shall
6 consider the University of Florida's Bureau of Economic and
7 Business Research (BEBR) medium population projections and any
8 population projection data and analysis submitted by a local
9 government pursuant to the public workshop described in
10 subsection (1) if the data and analysis support the local
11 government's comprehensive plan. Any adjustment of or
12 deviation from the BEBR projections must be fully described,
13 and the original BEBR data must be presented along with the
14 adjusted data.

15 2. A list of water supply development project options,
16 including traditional and alternative water supply project
17 options, from which local government, government-owned and
18 privately owned utilities, regional water supply authorities,
19 multijurisdictional water supply entities, self-suppliers, and
20 others may choose for water supply development. In addition to
21 projects listed by the district, such users may propose
22 specific projects for inclusion in the list of alternative
23 water supply projects. If such users propose a project to be
24 listed as an alternative water supply project, the district
25 shall determine whether it meets the goals of the plan, and,
26 if so, it shall be included in the list. The total capacity of
27 the projects included in the plan shall exceed the needs
28 identified in subparagraph 1. and shall take into account
29 water conservation and other demand management measures, as
30 well as water resources constraints, including adopted minimum
31 flows and levels and water reservations. Where the district

1 determines it is appropriate, the plan should specifically
2 identify the need for multijurisdictional approaches to
3 project options that, based on planning level analysis, are
4 appropriate to supply the intended uses and that, based on
5 such analysis, appear to be permittable and financially and
6 technically feasible. The list of water supply development
7 options must contain provisions that recognize that
8 alternative water supply options for agricultural
9 self-suppliers are limited.

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

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

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

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

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

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

26 373.2234 Preferred water supply sources.--The
27 governing board of a water management district is authorized
28 to adopt rules that identify preferred water supply sources
29 for consumptive uses for which there is sufficient data to
30 establish that a preferred source will provide a substantial
31 new water supply to meet the existing and projected

1 reasonable-beneficial uses of a water supply planning region
2 identified pursuant to s. 373.0361(1), while sustaining
3 existing water resources and natural systems. At a minimum,
4 such rules must contain a description of the preferred water
5 supply source and an assessment of the water the preferred
6 source is projected to produce. If an applicant proposes to
7 use a preferred water supply source, that applicant's proposed
8 water use is subject to s. 373.223(1), except that the
9 proposed use of a preferred water supply source must be
10 considered by a water management district when determining
11 whether a permit applicant's proposed use of water is
12 consistent with the public interest pursuant to s.
13 373.223(1)(c). A consumptive use permit issued for the use of
14 a preferred water supply source must be granted, when
15 requested by the applicant, for at least a 20-year period and
16 may be subject to the compliance reporting provisions of s.
17 373.236(4)~~(3)~~. Nothing in this section shall be construed to
18 exempt the use of preferred water supply sources from the
19 provisions of ss. 373.016(4) and 373.223(2) and (3), or be
20 construed to provide that permits issued for the use of a
21 nonpreferred water supply source must be issued for a duration
22 of less than 20 years or that the use of a nonpreferred water
23 supply source is not consistent with the public interest.
24 Additionally, nothing in this section shall be interpreted to
25 require the use of a preferred water supply source or to
26 restrict or prohibit the use of a nonpreferred water supply
27 source. Rules adopted by the governing board of a water
28 management district to implement this section shall specify
29 that the use of a preferred water supply source is not
30 required and that the use of a nonpreferred water supply
31 source is not restricted or prohibited.

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

6 373.236 Duration of permits; compliance reports.--

7 (2) The Legislature finds that some agricultural
8 landowners remain unaware of their ability to request a
9 20-year consumptive use permit under subsection (1) for
10 initial permits or for renewals. Therefore, the water
11 management districts shall inform agricultural applicants of
12 this option in the application form.

13 ~~(5)(4)~~ Permits approved for the development of
14 alternative water supplies shall be granted for a term of at
15 least 20 years. However, if the permittee issues bonds for the
16 construction of the project, upon request of the permittee
17 prior to the expiration of the permit, that permit shall be
18 extended for such additional time as is required for the
19 retirement of bonds, not including any refunding or
20 refinancing of such bonds, provided that the governing board
21 determines that the use will continue to meet the conditions
22 for the issuance of the permit. Such a permit is subject to
23 compliance reports under subsection~~(4)(3)~~.

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

26 373.407 Memorandum of agreement for an
27 agricultural-related exemption.--No later than July 1, 2007,
28 the Department of Agriculture and Consumer Services and each
29 water management district shall enter into a memorandum of
30 agreement under which the Department of Agricultural and
31 Consumer Services shall assist in a determination by a water

1 management district as to whether an existing or proposed
2 activity qualifies for the exemption in s. 373.406(2). The
3 memorandum of agreement shall provide a process by which, upon
4 the request of a water management district, the Department of
5 Agriculture and Consumer Services shall conduct a nonbinding
6 review as to whether an existing or proposed activity
7 qualifies for an agricultural-related exemption in s.
8 373.406(2). The memorandum of agreement shall provide
9 processes and procedures by which the Department of
10 Agriculture and Consumer Services shall undertake this review
11 effectively and efficiently and issue a recommendation.

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

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