

By the Committees on Community Affairs; Agriculture; and  
 Senator Argenziano

578-2253-06

1                                   A bill to be entitled  
 2           An act relating to agricultural economic  
 3           development; amending s. 70.001, F.S.;  
 4           providing a deadline for an owner of  
 5           agricultural land to present a claim prior to  
 6           filing an action against a governmental entity  
 7           regarding private property rights; amending s.  
 8           163.3162, F.S.; providing for application for  
 9           an amendment to the local government  
 10          comprehensive plan by the owner of land that  
 11          meets certain provisions of the definition of  
 12          an agricultural enclave; providing requirements  
 13          relating to such applications; exempting  
 14          certain amendments from specified rules of the  
 15          Department of Community Affairs under certain  
 16          circumstances; amending s. 163.3164, F.S.;  
 17          defining the term "agricultural enclave" for  
 18          purposes of the Local Government Comprehensive  
 19          Planning and Land Development Regulation Act;  
 20          creating s. 259.047, F.S.; providing  
 21          requirements relating to the purchase of land  
 22          on which an agricultural lease exists; amending  
 23          s. 373.0361, F.S.; providing for recognition  
 24          that alternative water supply development  
 25          options for agricultural self-suppliers are  
 26          limited; amending s. 373.2234, F.S.; conforming  
 27          a cross-reference; amending s. 373.236, F.S.;  
 28          requiring water management districts to inform  
 29          landowners of the option to obtain certain  
 30          consumptive use permits; creating s. 373.407,  
 31          F.S.; providing for memoranda of agreement

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

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

1 residential areas that surround the parcel. Each application  
2 for a comprehensive plan amendment under this subsection for a  
3 parcel larger than 640 acres must include appropriate new  
4 urbanism concepts such as clustering, mixed-use development,  
5 the creation of rural village and city centers, and the  
6 transfer of development rights in order to discourage urban  
7 sprawl while protecting landowner rights.

8 (a) The local government and the owner of a parcel of  
9 land that is the subject of an application for an amendment  
10 shall have 180 days following the date that the local  
11 government receives a complete application to negotiate in  
12 good faith to reach consensus on the land uses and intensities  
13 of use that are consistent with the uses and intensities of  
14 use of the industrial, commercial, or residential areas that  
15 surround the parcel. Within 30 days after the local  
16 government's receipt of such application, the local government  
17 and owner must agree in writing to a schedule for information  
18 submittal, public hearings, negotiations, and final action on  
19 the amendment, which schedule may thereafter be altered only  
20 with the written consent of the local government and the  
21 owner. Compliance with the schedule in the written agreement  
22 constitutes good-faith negotiations for purposes of paragraph  
23 (c).

24 (b) Upon conclusion of good-faith negotiations under  
25 paragraph (a), regardless of whether the local government and  
26 owner reach consensus on the land uses and intensities of use  
27 that are consistent with the uses and intensities of use of  
28 the industrial, commercial, or residential areas that surround  
29 the parcel, the amendment must be transmitted to the state  
30 land planning agency for review pursuant to s. 163.3184. If  
31 the local government fails to transmit the amendment within

1 180 days after receipt of a complete application, the  
2 amendment must be immediately transferred to the state land  
3 planning agency for such review at the first available  
4 transmittal cycle. The state land planning agency may not use  
5 any provision of rule 9J-5.006(5), Florida Administrative  
6 Code, as a factor in determining compliance of an amendment.

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

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

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

16 2. The Everglades Protection Area, as defined in s.  
17 373.4592(2).

18 Section 3. Subsection (33) is added to section  
19 163.3164, Florida Statutes, to read:

20 163.3164 Local Government Comprehensive Planning and  
21 Land Development Regulation Act; definitions.--As used in this  
22 act:

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

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

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

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

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

3           2. Property that the local government has designated,  
4 in the local government's comprehensive plan, zoning map, and  
5 future land use map, as land that is to be developed for  
6 industrial, commercial, or residential purposes, and at least  
7 75 percent of such property is existing industrial,  
8 commercial, or residential development;

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

16           (e) Does not exceed 2,560 acres; however, if the  
17 property is surrounded by existing or authorized residential  
18 development that will result in a density at buildout of at  
19 least 1,000 residents per square mile, the area shall be  
20 determined to be urban and the parcel may not exceed 5,120  
21 acres.

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

24           259.047 Acquisition of land on which an agricultural  
25 lease exists.--

26           (1) When land with an existing agricultural lease is  
27 acquired in fee simple pursuant to this chapter or chapter  
28 375, the existing agricultural lease may continue in force for  
29 the actual time remaining on the lease agreement. Any entity  
30 managing lands acquired under this section must consider  
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1 existing agricultural leases in the development of a land  
2 management plan required under s. 253.034.

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

8 Section 5. Paragraph (a) of subsection (2) of section  
9 373.0361, Florida Statutes, is amended to read:

10 373.0361 Regional water supply planning.--

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

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

17 1. A quantification of the water supply needs for all  
18 existing and future reasonable-beneficial uses within the  
19 planning horizon. The level-of-certainty planning goal  
20 associated with identifying the water supply needs of existing  
21 and future reasonable-beneficial uses shall be based upon  
22 meeting those needs for a 1-in-10-year drought event.

23 Population projections used for determining public water  
24 supply needs must be based upon the best available data. In  
25 determining the best available data, the district shall  
26 consider the University of Florida's Bureau of Economic and  
27 Business Research (BEBR) medium population projections and any  
28 population projection data and analysis submitted by a local  
29 government pursuant to the public workshop described in  
30 subsection (1) if the data and analysis support the local  
31 government's comprehensive plan. Any adjustment of or

1 deviation from the BEBR projections must be fully described,  
2 and the original BEBR data must be presented along with the  
3 adjusted data.

4         2. A list of water supply development project options,  
5 including traditional and alternative water supply project  
6 options, from which local government, government-owned and  
7 privately owned utilities, regional water supply authorities,  
8 multijurisdictional water supply entities, self-suppliers, and  
9 others may choose for water supply development. In addition to  
10 projects listed by the district, such users may propose  
11 specific projects for inclusion in the list of alternative  
12 water supply projects. If such users propose a project to be  
13 listed as an alternative water supply project, the district  
14 shall determine whether it meets the goals of the plan, and,  
15 if so, it shall be included in the list. The total capacity of  
16 the projects included in the plan shall exceed the needs  
17 identified in subparagraph 1. and shall take into account  
18 water conservation and other demand management measures, as  
19 well as water resources constraints, including adopted minimum  
20 flows and levels and water reservations. Where the district  
21 determines it is appropriate, the plan should specifically  
22 identify the need for multijurisdictional approaches to  
23 project options that, based on planning level analysis, are  
24 appropriate to supply the intended uses and that, based on  
25 such analysis, appear to be permissible and financially and  
26 technically feasible. The list of water supply development  
27 options must contain provisions that recognize that  
28 alternative water supply options for agricultural  
29 self-suppliers are limited.

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

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

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

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

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

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

15           373.2234 Preferred water supply sources.--The  
16 governing board of a water management district is authorized  
17 to adopt rules that identify preferred water supply sources  
18 for consumptive uses for which there is sufficient data to  
19 establish that a preferred source will provide a substantial  
20 new water supply to meet the existing and projected  
21 reasonable-beneficial uses of a water supply planning region  
22 identified pursuant to s. 373.0361(1), while sustaining  
23 existing water resources and natural systems. At a minimum,  
24 such rules must contain a description of the preferred water  
25 supply source and an assessment of the water the preferred  
26 source is projected to produce. If an applicant proposes to  
27 use a preferred water supply source, that applicant's proposed  
28 water use is subject to s. 373.223(1), except that the  
29 proposed use of a preferred water supply source must be  
30 considered by a water management district when determining  
31 whether a permit applicant's proposed use of water is

1 consistent with the public interest pursuant to s.  
2 373.223(1)(c). A consumptive use permit issued for the use of  
3 a preferred water supply source must be granted, when  
4 requested by the applicant, for at least a 20-year period and  
5 may be subject to the compliance reporting provisions of s.  
6 373.236~~(4)~~~~(3)~~. Nothing in this section shall be construed to  
7 exempt the use of preferred water supply sources from the  
8 provisions of ss. 373.016(4) and 373.223(2) and (3), or be  
9 construed to provide that permits issued for the use of a  
10 nonpreferred water supply source must be issued for a duration  
11 of less than 20 years or that the use of a nonpreferred water  
12 supply source is not consistent with the public interest.  
13 Additionally, nothing in this section shall be interpreted to  
14 require the use of a preferred water supply source or to  
15 restrict or prohibit the use of a nonpreferred water supply  
16 source. Rules adopted by the governing board of a water  
17 management district to implement this section shall specify  
18 that the use of a preferred water supply source is not  
19 required and that the use of a nonpreferred water supply  
20 source is not restricted or prohibited.

21 Section 7. Present subsections (2) and (3) of section  
22 373.236, Florida Statutes, are renumbered as subsections (3)  
23 and (4), respectively, present subsection (4) is renumbered as  
24 subsection (5) and amended, and a new subsection (2) is added  
25 to that section, to read:

26 373.236 Duration of permits; compliance reports.--

27 (2) The Legislature finds that some agricultural  
28 landowners remain unaware of their ability to request a  
29 20-year consumptive use permit under subsection (1) for  
30 initial permits or for renewals. Therefore, the water  
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1 management districts shall inform agricultural applicants of  
2 this option in the application form.

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

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

16 373.407 Memorandum of agreement for an  
17 agricultural-related exemption.--No later than July 1, 2007,  
18 the Department of Agriculture and Consumer Services and each  
19 water management district shall enter into a memorandum of  
20 agreement under which the Department of Agricultural and  
21 Consumer Services shall assist in a determination by a water  
22 management district as to whether an existing or proposed  
23 activity qualifies for the exemption in s. 373.406(2). The  
24 memorandum of agreement shall provide a process by which, upon  
25 the request of a water management district, the Department of  
26 Agriculture and Consumer Services shall conduct a nonbinding  
27 review as to whether an existing or proposed activity  
28 qualifies for an agricultural-related exemption in s.  
29 373.406(2). The memorandum of agreement shall provide  
30 processes and procedures by which the Department of  
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1 Agriculture and Consumer Services shall undertake this review  
2 effectively and efficiently and issue a recommendation.

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

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6                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7   COMMITTEE SUBSTITUTE FOR  
8   CS/SB 1880

9 The committee substitute for committee substitute (CS)  
10 requires an amendment to a local comprehensive plan for an  
11 agricultural enclave that is larger than 640 acres to include  
12 appropriate new urbanism concepts. It also amends the  
13 definition of "agricultural enclave" to require that public  
14 services be available or scheduled in the capital improvements  
15 element. This CS provides that surrounding residential  
16 densities must be at least 1,000 residents per square mile for  
17 an agricultural enclave to exceed the 2,560-acre threshold,  
18 but the threshold is still capped at 5,120 acres.  
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