

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Mayfield offered the following:

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsection (5) of section 163.3162, Florida
6 Statutes, is amended to read:

7 163.3162 Agricultural Lands and Practices Act.--

8 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The
9 owner of a parcel of land defined as an agricultural enclave
10 under s. 163.3164(33) may apply for an amendment to the local
11 government comprehensive plan pursuant to s. 163.3187. Such
12 amendment is presumed to be consistent with rule 9J-5.006(5),
13 Florida Administrative Code, and may include land uses,
14 densities, and intensities of use that are consistent with the
15 uses, densities, and intensities of use of the industrial,
16 commercial, or residential areas that surround the parcel. This

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17 presumption may be rebutted by clear and convincing evidence.
18 Each application for a comprehensive plan amendment under this
19 subsection for a parcel larger than 640 acres must include
20 appropriate new urbanism concepts such as clustering, mixed-use
21 development, the creation of rural village and city centers, and
22 the transfer of development rights in order to discourage urban
23 sprawl while protecting landowner rights. Notwithstanding the
24 provisions of a comprehensive plan, the local government may not
25 prohibit land uses, densities, and intensities of use that are
26 consistent with the uses, densities, and intensities of use of
27 the industrial, commercial, or residential areas that surround
28 the parcel. Densities and intensities of use for an agricultural
29 enclave shall, at minimum, be calculated as the average density
30 or intensity of uses within 3 miles of the perimeter of the
31 parcel. If a local government imposes development conditions
32 that prevent the owner from achieving consistent densities and
33 intensities of use pursuant to this subsection, the owner may
34 apply to the circuit court for appropriate relief pursuant to s.
35 70.001 after presenting a claim to the local government as set
36 forth in s. 70.001(4)(a). The imposition of such conditions is
37 presumed to impose an inordinate burden. This presumption may be
38 rebutted by clear and convincing evidence.

39 (a) The local government and the owner of a parcel of land
40 that is the subject of an application for an amendment shall
41 have 180 days following the date that the local government
42 receives a complete application to negotiate in good faith to
43 reach consensus on the land uses, densities, and intensities of
44 use that are consistent with the uses, densities, and

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45 intensities of use of the industrial, commercial, or residential
46 areas that surround the parcel. Within 30 days after the local
47 government's receipt of such an application, the local
48 government and owner must agree in writing to a schedule for
49 information submittal, public hearings, negotiations, and final
50 action on the amendment, which schedule may thereafter be
51 altered only with the written consent of the local government
52 and the owner. Compliance with the schedule in the written
53 agreement constitutes good faith negotiations for purposes of
54 paragraph (d) ~~(e)~~.

55 (b) Upon conclusion of good faith negotiations under
56 paragraph (a), regardless of whether the local government and
57 owner reach consensus on the land uses, densities, and
58 intensities of use that are consistent with the uses, densities,
59 and intensities of use of the industrial, commercial, or
60 residential areas that surround the parcel, the amendment must
61 be transmitted to the state land planning agency for review
62 pursuant to s. 163.3184. If the local government fails to
63 transmit the amendment within 180 days after receipt of a
64 complete application, the amendment must be immediately
65 transferred to the state land planning agency for such review at
66 the first available transmittal cycle. A plan amendment
67 transmitted to the state land planning agency submitted under
68 this subsection is presumed to be consistent with rule 9J-
69 5.006(5), Florida Administrative Code. This presumption may be
70 rebutted by clear and convincing evidence.

71 (c) Notwithstanding the provisions of a comprehensive
72 plan, after review by the state land planning agency, the owner

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73 shall respond to any objections, recommendations, or comments
74 issued by the agency pursuant to s. 163.3184(6) and address each
75 compliance issue raised by the state land planning agency
76 related to the owner's property. If the department has issued no
77 objections, recommendations, or comments, or if the owner has
78 responded to any objections, recommendations, or comments and
79 the local government denies or fails to approve the amendment
80 within the time period specified in s. 163.3184(7), such denial
81 or failure to approve the amendment is presumed to impose an
82 inordinate burden, and the owner may apply to the circuit court
83 for appropriate relief pursuant to s. 70.001 after presenting a
84 claim to the local government as set forth in s. 70.001(4)(a). A
85 plan amendment reviewed by the land planning agency under this
86 subsection is presumed to be consistent with the provisions of
87 rule 9J-5.006(5), Florida Administrative Code. This presumption
88 may be rebutted by clear and convincing evidence.

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

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

- 97 1. The Wekiva Study Area, as described in s. 369.316; or
98 2. The Everglades Protection Area, as defined in s.
99 373.4592(2).

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100 3. Those zones, areas or programs managed or administered
101 by the United States Department of Defense as defined pursuant
102 to ss. 163.3175(a) and (b), 163.3191(2)(n) and 163.3177(6)(a),
103 F.S.

104 (f) For concurrency purposes, agricultural enclaves shall
105 be treated as any previously approved development surrounding
106 the agricultural enclave has been treated and calculated as the
107 average concurrency requirements within 3 miles of the perimeter
108 of the parcel.

109 Section 2. Paragraph (d) of subsection (33) of section
110 163.3164, Florida Statutes, is amended to read:

111 163.3164 Local Government Comprehensive Planning and Land
112 Development Regulation Act; definitions.--As used in this act:

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

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

122 Section 3. Subsections (6) and (7) of section 163.3245,
123 Florida Statutes, are renumbered as subsections (7) and (8),
124 respectively, and a new subsection (6) is added to that section
125 to read:

126 163.3245 Optional sector plans.--

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127 (6) If an application for development approval or an
 128 application for a comprehensive plan amendment pursuant to this
 129 part has been filed and is pending prior to the effective date
 130 of a sector plan, the application shall only be required to
 131 comply with the provisions of a subsequently adopted sector plan
 132 upon written consent of the applicant. This subsection applies
 133 to all applications within a sector planning area pending before
 134 a local government on or before December 31, 2007.

135 Section 4. This act shall take effect July 1, 2008.

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 139 **T I T L E A M E N D M E N T**

140 Remove the entire title and insert:

141 A bill to be entitled

142 An act relating to land development regulation; amending s.
 143 163.3162, F.S.; providing for the use of certain lands
 144 surrounding an agricultural enclave; creating a rebuttable
 145 presumption for the imposition of certain development conditions
 146 relating to agricultural enclaves; providing a timeframe for
 147 submitting certain information relating to proposed plan
 148 amendments; creating a rebuttable presumption for denial of or
 149 failure to approve plan amendments relating to agricultural
 150 enclaves; providing concurrency for the treatment of
 151 agricultural enclaves in relation to certain surrounding lands;
 152 amending s. 163.3164, F.S.; revising the definition of
 153 "agricultural enclave"; amending s. 163.3245, F.S.; revising
 154 provisions relating to optional sector plans; providing

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HOUSE AMENDMENT

Bill No. CS/HB 1173

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155 applicability to certain pending applications; providing an
156 effective date.

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