

By Senator Baker

20-03268A-08

20082246\_\_

1 A bill to be entitled

2 An act relating to land development regulation; amending  
3 s. 163.3162, F.S.; providing for the use of certain lands  
4 surrounding an agricultural enclave; creating a rebuttable  
5 presumption for the imposition of certain development  
6 conditions relating to agricultural enclaves; providing a  
7 timeframe for submitting certain information relating to  
8 proposed plan amendments; creating a rebuttable  
9 presumption for denial of or failure to approve plan  
10 amendments relating to agricultural enclaves; amending s.  
11 163.3245, F.S.; revising provisions relating to optional  
12 sector plans; providing applicability to certain pending  
13 applications; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Subsection (5) of section 163.3162, Florida  
18 Statutes, is amended to read:

19 163.3162 Agricultural Lands and Practices Act.--

20 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The  
21 owner of a parcel of land defined as an agricultural enclave  
22 under s. 163.3164(33) may apply for an amendment to the local  
23 government comprehensive plan pursuant to s. 163.3187. Such  
24 amendment is presumed to be consistent with rule 9J-5.006(5),  
25 Florida Administrative Code, and may include land uses and  
26 intensities of use that are consistent with the uses and  
27 intensities of use of the industrial, commercial, or residential  
28 areas that surround the parcel. This presumption may be rebutted  
29 by clear and convincing evidence. Each application for a

20-03268A-08

20082246\_\_

30 comprehensive plan amendment under this subsection for a parcel  
31 larger than 640 acres must include appropriate new urbanism  
32 concepts such as clustering, mixed-use development, the creation  
33 of rural village and city centers, and the transfer of  
34 development rights in order to discourage urban sprawl while  
35 protecting landowner rights. Notwithstanding the provisions of a  
36 comprehensive plan, the local government may not prohibit land  
37 uses and intensities of use that are consistent with the uses and  
38 intensities of use of the industrial, commercial, or residential  
39 areas that surround the parcel to a distance equal to the longest  
40 dimension of the parcel. Intensities of uses surrounding an  
41 agricultural enclave shall, at minimum, be the average intensity  
42 with the surrounding area as defined herein. If a local  
43 government imposes development conditions that prevent the owner  
44 from achieving consistent densities and intensities of use  
45 pursuant to this subsection, the owner may apply to the circuit  
46 court for appropriate relief pursuant to s. 70.001. The  
47 imposition of such conditions is presumed to impose an inordinate  
48 burden. This presumption may be rebutted by clear and convincing  
49 evidence.

50 (a) The local government and the owner of a parcel of land  
51 that is the subject of an application for an amendment shall have  
52 180 days following the date that the local government receives a  
53 complete application to negotiate in good faith to reach  
54 consensus on the land uses and intensities of use that are  
55 consistent with the uses and intensities of use of the  
56 industrial, commercial, or residential areas that surround the  
57 parcel. Within 30 days after the local government's receipt of  
58 such an application, the local government and owner must agree in

20-03268A-08

20082246\_\_

59 | writing to a schedule for information submittal, public hearings,  
60 | negotiations, and final action on the amendment, which schedule  
61 | may thereafter be altered only with the written consent of the  
62 | local government and the owner. Compliance with the schedule in  
63 | the written agreement constitutes good faith negotiations for  
64 | purposes of paragraph (d) ~~(e)~~.

65 |       (b) Upon conclusion of good faith negotiations under  
66 | paragraph (a), regardless of whether the local government and  
67 | owner reach consensus on the land uses and intensities of use  
68 | that are consistent with the uses and intensities of use of the  
69 | industrial, commercial, or residential areas that surround the  
70 | parcel, the amendment must be transmitted to the state land  
71 | planning agency for review pursuant to s. 163.3184. If the local  
72 | government fails to transmit the amendment within 180 days after  
73 | receipt of a complete application, the amendment must be  
74 | immediately transferred to the state land planning agency for  
75 | such review at the first available transmittal cycle. A plan  
76 | amendment transmitted to the state land planning agency submitted  
77 | under this subsection is presumed to be consistent with rule 9J-  
78 | 5.006(5), Florida Administrative Code. This presumption may be  
79 | rebutted by clear and convincing evidence.

80 |       (c) Notwithstanding any provisions of a comprehensive plan  
81 | to the contrary, after review by the state land planning agency,  
82 | the owner shall respond to any objections, recommendations, or  
83 | comments issued by the agency pursuant to s. 163.3184(6). If the  
84 | department has issued no objections, recommendations, or  
85 | comments, or if the owner has responded to any objections,  
86 | recommendations, or comments and the local government denies or  
87 | fails to approve the amendment within the time period specified

20-03268A-08

20082246\_\_

88 in s. 163.3184(7), the owner may apply to the circuit court for  
89 appropriate relief pursuant to s. 70.001 on the basis that the  
90 denial or failure to approve the amendment constitutes an  
91 inordinate burden. A plan amendment reviewed by the land planning  
92 agency under this subsection is presumed to be consistent with  
93 the provisions of rule 9J-5.006(5), Florida Administrative Code.  
94 This presumption may be rebutted by clear and convincing  
95 evidence.

96 (d)~~(e)~~ If the owner fails to negotiate in good faith, a  
97 plan amendment submitted under this subsection is not entitled to  
98 the rebuttable presumption under this subsection in the  
99 negotiation and amendment process.

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

- 104 1. The Wekiva Study Area, as described in s. 369.316; or
- 105 2. The Everglades Protection Area, as defined in s.  
106 373.4592(2).

107 Section 2. Present subsections (6) and (7) of section  
108 163.3245, Florida Statutes, are renumbered as subsections (7) and  
109 (8), respectively, and a new subsection (6) is added to that  
110 section, to read:

111 163.3245 Optional sector plans.--

112 (6) If an application for development approval or an  
113 application for a comprehensive plan amendment pursuant to this  
114 part has been filed and is pending prior to the effective date of  
115 a sector plan, the application shall only be required to comply  
116 with the provisions of a subsequently adopted sector plan upon

20-03268A-08

20082246\_\_

117 written consent of the applicant. This subsection applies to all  
118 applications within a sector planning area pending before a local  
119 government on or before December 31, 2007.

120 Section 3. This act shall take effect July 1, 2008.