1 A bill to be entitled
2 An act relating to developments of regional impact;
3 amending s. 163.3184, F.S.; requiring that
4 comprehensive plan amendments proposing certain
5 developments follow the state coordinated review
6 process; amending s. 380.06, F.S.; limiting the scope
7 of certain recommendations and comments by reviewing
8 agencies regarding proposed developments; revising
9 certain review criteria for reports and
10 recommendations on the regional impact of proposed
11 developments; requiring regional planning agency
12 reports to contain recommendations consistent with the
13 standards of state permitting agencies and water
14 management districts; providing that specified changes
15 to a development order are not substantial deviations;
16 providing an exemption from development-of-regional-
17 impact review for proposed developments that meet
18 specified criteria and are located in certain
19 jurisdictions; requiring an agreement for such
20 exemption; providing notice requirements; providing
21 for effect and applicability; amending s. 380.115,
22 F.S.; revising conditions under which a local
23 government is required to rescind a development-of-
24 regional-impact development order; providing a
25 presumption that certain agricultural enclaves do not
26 constitute urban sprawl; establishing qualifications
27 for designation as an agricultural enclave for such
28 purpose and establishing exceptions from the

29 definition for designated protected areas; providing
30 an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Paragraph (c) of subsection (2) of section
35 163.3184, Florida Statutes, is amended to read:
36 163.3184 Process for adoption of comprehensive plan or
37 plan amendment.—
38 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—
39 (c) Plan amendments that are in an area of critical state
40 concern designated pursuant to s. 380.05; propose a rural land
41 stewardship area pursuant to s. 163.3248; propose a sector plan
42 pursuant to s. 163.3245; update a comprehensive plan based on an
43 evaluation and appraisal pursuant to s. 163.3191; propose a
44 development pursuant to s. 380.06(24)(x); or are new plans for
45 newly incorporated municipalities adopted pursuant to s.
46 163.3167 shall follow the state coordinated review process in
47 subsection (4).
48 Section 2. Paragraph (a) of subsection (7), subsection
49 (12), and paragraph (e) of subsection (19) of section 380.06,
50 Florida Statutes, are amended, and paragraph (x) is added to
51 subsection (24) of that section, to read:
52 380.06 Developments of regional impact.—
53 (7) PREAPPLICATION PROCEDURES.—
54 (a) Before filing an application for development approval,
55 the developer shall contact the regional planning agency having
56 with jurisdiction over the proposed development to arrange a

57 preapplication conference. Upon the request of the developer or
58 the regional planning agency, other affected state and regional
59 agencies shall participate in this conference and shall identify
60 the types of permits issued by the agencies, the level of
61 information required, and the permit issuance procedures as
62 applied to the proposed development. The levels of service
63 required in the transportation methodology shall be the same
64 levels of service used to evaluate concurrency in accordance
65 with s. 163.3180. The regional planning agency shall provide the
66 developer information about the development-of-regional-impact
67 process and the use of preapplication conferences to identify
68 issues, coordinate appropriate state and local agency
69 requirements, and otherwise promote a proper and efficient
70 review of the proposed development. If an agreement is reached
71 regarding assumptions and methodology to be used in the
72 application for development approval, the reviewing agencies may
73 not subsequently object to those assumptions and methodologies
74 unless subsequent changes to the project or information obtained
75 during the review make those assumptions and methodologies
76 inappropriate. The reviewing agencies may make only
77 recommendations or comments regarding a proposed development
78 which are consistent with the statutes, rules, or adopted local
79 government ordinances that are applicable to developments in the
80 jurisdiction where the proposed development is located.
81 (12) REGIONAL REPORTS.—
82 (a) Within 50 days after receipt of the notice of public
83 hearing required in paragraph (11)(c), the regional planning
84 agency, if one has been designated for the area including the

85 local government, shall prepare and submit to the local
86 government a report and recommendations on the regional impact
87 of the proposed development. In preparing its report and
88 recommendations, the regional planning agency shall identify
89 regional issues based upon the following review criteria and
90 make recommendations to the local government on these regional
91 issues, specifically considering whether, and the extent to
92 which:
93 1. The development will have a favorable or unfavorable
94 impact on state or regional resources or facilities identified
95 in the applicable state or regional plans. As used in ~~For the~~
96 ~~purposes of~~ this subsection, the term "applicable state plan"
97 means the state comprehensive plan. As used in ~~For the purposes~~
98 ~~of~~ this subsection, the term "applicable regional plan" means an
99 ~~adopted comprehensive regional policy plan until the adoption of~~
100 ~~a strategic regional policy plan pursuant to s. 186.508, and~~
101 ~~thereafter means an~~ adopted strategic regional policy plan.
102 2. The development will significantly impact adjacent
103 jurisdictions. At the request of the appropriate local
104 government, regional planning agencies may also review and
105 comment upon issues that affect only the requesting local
106 government.
107 3. As one of the issues considered in the review in
108 subparagraphs 1. and 2., the development will favorably or
109 adversely affect the ability of people to find adequate housing
110 reasonably accessible to their places of employment if the
111 regional planning agency has adopted an affordable housing
112 policy as part of its strategic regional policy plan. The

113 determination should take into account information on factors
114 that are relevant to the availability of reasonably accessible
115 adequate housing. Adequate housing means housing that is
116 available for occupancy and that is not substandard.
117 <u>(b) The regional planning agency report must contain</u>
118 <u>recommendations that are consistent with the standards required</u>
119 <u>by the applicable state permitting agencies or the water</u>
120 <u>management district.</u>
121 <u>(c)</u> ~~(b)~~ At the request of the regional planning agency,
122 other appropriate agencies shall review the proposed development
123 and shall prepare reports and recommendations on issues that are
124 clearly within the jurisdiction of those agencies. Such agency
125 reports shall become part of the regional planning agency
126 report; however, the regional planning agency may attach
127 dissenting views. When water management district and Department
128 of Environmental Protection permits have been issued pursuant to
129 chapter 373 or chapter 403, the regional planning council may
130 comment on the regional implications of the permits but may not
131 offer conflicting recommendations.
132 <u>(d)</u> ~~(c)~~ The regional planning agency shall afford the
133 developer or any substantially affected party reasonable
134 opportunity to present evidence to the regional planning agency
135 head relating to the proposed regional agency report and
136 recommendations.
137 <u>(e)</u> ~~(d)~~ <u>If</u> ~~When~~ the location of a proposed development
138 involves land within the boundaries of multiple regional
139 planning councils, the state land planning agency shall
140 designate a lead regional planning council. The lead regional

141 planning council shall prepare the regional report.
142 (19) SUBSTANTIAL DEVIATIONS.—
143 (e)1. Except for a development order rendered pursuant to
144 subsection (22) or subsection (25), a proposed change to a
145 development order which ~~that~~ individually or cumulatively with
146 any previous change is less than any numerical criterion
147 contained in subparagraphs (b)1.-10. and does not exceed any
148 other criterion, or which ~~that~~ involves an extension of the
149 buildout date of a development, or any phase thereof, of less
150 than 5 years is not subject to the public hearing requirements
151 of subparagraph (f)3., and is not subject to a determination
152 pursuant to subparagraph (f)5. Notice of the proposed change
153 shall be made to the regional planning council and the state
154 land planning agency. Such notice must ~~shall~~ include a
155 description of previous individual changes made to the
156 development, including changes previously approved by the local
157 government, and must ~~shall~~ include appropriate amendments to the
158 development order.
159 2. The following changes, individually or cumulatively
160 with any previous changes, are not substantial deviations:
161 a. Changes in the name of the project, developer, owner,
162 or monitoring official.
163 b. Changes to a setback which ~~that~~ do not affect noise
164 buffers, environmental protection or mitigation areas, or
165 archaeological or historical resources.
166 c. Changes to minimum lot sizes.
167 d. Changes in the configuration of internal roads which
168 ~~that~~ do not affect external access points.

169 e. Changes to the building design or orientation which
170 ~~that~~ stay approximately within the approved area designated for
171 such building and parking lot, and which do not affect
172 historical buildings designated as significant by the Division
173 of Historical Resources of the Department of State.
174 f. Changes to increase the acreage in the development, if
175 ~~provided that~~ no development is proposed on the acreage to be
176 added.
177 g. Changes to eliminate an approved land use, if ~~provided~~
178 ~~that~~ there are no additional regional impacts.
179 h. Changes required to conform to permits approved by any
180 federal, state, or regional permitting agency, if ~~provided that~~
181 these changes do not create additional regional impacts.
182 i. Any renovation or redevelopment of development within a
183 previously approved development of regional impact which does
184 not change land use or increase density or intensity of use.
185 j. Changes that modify boundaries and configuration of
186 areas described in subparagraph (b)11. due to science-based
187 refinement of such areas by survey, by habitat evaluation, by
188 other recognized assessment methodology, or by an environmental
189 assessment. In order for changes to qualify under this sub-
190 subparagraph, the survey, habitat evaluation, or assessment must
191 occur before ~~prior to~~ the time that a conservation easement
192 protecting such lands is recorded and must not result in any net
193 decrease in the total acreage of the lands specifically set
194 aside for permanent preservation in the final development order.
195 k. Changes that do not increase the number of external
196 peak hour trips and do not reduce open space and conserved areas

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

197 within the project except as otherwise permitted by sub-
198 subparagraph j.
199 l.~~k.~~ Any other change that ~~which~~ the state land planning
200 agency, in consultation with the regional planning council,
201 agrees in writing is similar in nature, impact, or character to
202 the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that
203 ~~which~~ does not create the likelihood of any additional regional
204 impact.
205
206 This subsection does not require the filing of a notice of
207 proposed change but requires ~~shall require~~ an application to the
208 local government to amend the development order in accordance
209 with the local government's procedures for amendment of a
210 development order. In accordance with the local government's
211 procedures, including requirements for notice to the applicant
212 and the public, the local government shall either deny the
213 application for amendment or adopt an amendment to the
214 development order which approves the application with or without
215 conditions. Following adoption, the local government shall
216 render to the state land planning agency the amendment to the
217 development order. The state land planning agency may appeal,
218 pursuant to s. 380.07(3), the amendment to the development order
219 if the amendment involves sub-subparagraph g., sub-subparagraph
220 h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-
221 subparagraph l. and if the agency ~~it~~ believes that the change
222 creates a reasonable likelihood of new or additional regional
223 impacts.
224 3. Except for the change authorized by sub-subparagraph

225 2.f., any addition of land not previously reviewed or any change
226 not specified in paragraph (b) or paragraph (c) shall be
227 presumed to create a substantial deviation. This presumption may
228 be rebutted by clear and convincing evidence.
229 4. Any submittal of a proposed change to a previously
230 approved development must ~~shall~~ include a description of
231 individual changes previously made to the development, including
232 changes previously approved by the local government. The local
233 government shall consider the previous and current proposed
234 changes in deciding whether such changes cumulatively constitute
235 a substantial deviation requiring further development-of-
236 regional-impact review.
237 5. The following changes to an approved development of
238 regional impact shall be presumed to create a substantial
239 deviation. Such presumption may be rebutted by clear and
240 convincing evidence.
241 a. A change proposed for 15 percent or more of the acreage
242 to a land use not previously approved in the development order.
243 Changes of less than 15 percent shall be presumed not to create
244 a substantial deviation.
245 b. Notwithstanding any provision of paragraph (b) to the
246 contrary, a proposed change consisting of simultaneous increases
247 and decreases of at least two of the uses within an authorized
248 multiuse development of regional impact which was originally
249 approved with three or more uses specified in s. 380.0651(3)(c),
250 (d), and (e) and residential use.
251 6. If a local government agrees to a proposed change, a
252 change in the transportation proportionate share calculation and

253 mitigation plan in an adopted development order as a result of
254 recalculation of the proportionate share contribution meeting
255 the requirements of s. 163.3180(5)(h) in effect as of the date
256 of such change shall be presumed not to create a substantial
257 deviation. For purposes of this subsection, the proposed change
258 in the proportionate share calculation or mitigation plan may
259 ~~shall~~ not be considered an additional regional transportation
260 impact.
261 (24) STATUTORY EXEMPTIONS.—
262 (x) Any proposed development that is located in a local
263 government jurisdiction that does not qualify for an exemption
264 based on the population and density criteria in s.
265 380.06(29)(a), that is approved as a comprehensive plan
266 amendment adopted pursuant to s. 163.3184(4), and that is the
267 subject of an agreement pursuant to s. 288.106(5) is exempt from
268 this section. This exemption shall only be effective upon a
269 written agreement executed by the applicant, the local
270 government, and the state land planning agency. The state land
271 planning agency shall only be a party to the agreement upon a
272 determination that the development is the subject of an
273 agreement pursuant to s. 288.106(5) and that the local
274 government has the capacity to adequately assess the impacts of
275 the proposed development. The local government shall only be a
276 party to the agreement upon approval by the governing body of
277 the local government and upon providing at least 21 days' notice
278 to adjacent local governments that includes, at a minimum,
279 information regarding the location, density and intensity of
280 use, and timing of the proposed development. This exemption does

281 not apply to areas within the boundary of any area of critical
282 state concern designated pursuant to s. 380.05, within the
283 boundary of the Wekiva Study Area as described in s. 369.316, or
284 within 2 miles of the boundary of the Everglades Protection Area
285 as defined in s. 373.4592(2).
286
287 If a use is exempt from review as a development of regional
288 impact under paragraphs (a)-(u), but will be part of a larger
289 project that is subject to review as a development of regional
290 impact, the impact of the exempt use must be included in the
291 review of the larger project, unless such exempt use involves a
292 development of regional impact that includes a landowner,
293 tenant, or user that has entered into a funding agreement with
294 the Department of Economic Opportunity under the Innovation
295 Incentive Program and the agreement contemplates a state award
296 of at least $50 million.
297 Section 3. Subsection (1) of section 380.115, Florida
298 Statutes, is amended to read:
299 380.115 Vested rights and duties; effect of size
300 reduction, changes in guidelines and standards.—
301 (1) A change in a development-of-regional-impact guideline
302 and standard does not abridge or modify any vested or other
303 right or any duty or obligation pursuant to any development
304 order or agreement that is applicable to a development of
305 regional impact. A development that has received a development-
306 of-regional-impact development order pursuant to s. 380.06, but
307 is no longer required to undergo development-of-regional-impact
308 review by operation of a change in the guidelines and standards

or has reduced its size below the thresholds in s. 380.0651, or a development that is exempt pursuant to s. 380.06(24) or (29) ~~380.06(29)~~ shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before ~~prior to~~ a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 4. (1) Notwithstanding ss. 163.3162 and 163.3164, Florida Statutes, the owner of a parcel of land located in an

337 unincorporated area of a county that qualifies as an
338 agricultural enclave under subsection (2) may apply for an
339 amendment to the local government comprehensive plan pursuant to
340 s. 163.3184, Florida Statutes. The subject of the amendment is
341 presumed not to be urban sprawl, as defined in s. 163.3164,
342 Florida Statutes, if it proposes land uses and intensities of
343 use that are consistent with the existing uses and intensities
344 of use of, or consistent with the uses and intensities of use
345 authorized for, the industrial, commercial, or residential areas
346 that surround the parcel. If the parcel of land that is the
347 subject of an amendment under this section is abutted on all
348 sides by land having only one land use designation, the same
349 land use designation must be presumed by the county to be
350 appropriate for the parcel. The county shall, after considering
351 the proposed density and intensity, grant the parcel the same
352 land use designation as the surrounding parcels that abut the
353 parcel unless the county finds by clear and convincing evidence
354 that the grant would be detrimental to the health, safety, and
355 welfare of its residents.
356 (2) In order to qualify as an agricultural enclave under
357 this section, the parcel of land must be a parcel that:
358 (a) Is owned by a single person or entity;
359 (b) Has been in continuous use for bona fide agricultural
360 purposes, as defined by s. 193.461, Florida Statutes, for at
361 least 5 years before the date of any comprehensive plan
362 amendment application;
363 (c) Is surrounded on at least 95 percent of its perimeter
364 by property that the local government has designated as land

365 that may be developed for industrial, commercial, or residential
366 purposes; and
367 (d) Does not exceed 640 acres but is not smaller than 500
368 acres.
369 (3) This section does not preempt or replace the
370 protection currently existing for property located within the
371 boundaries of:
372 1. The Wekiva Study Area, as described in s. 369.316,
373 Florida Statutes; or
374 2. The Everglades Protection Area, as defined in s.
375 373.4592(2), Florida Statutes.
376
377 In order to qualify under this section as an enclave, the owner
378 of a parcel of land meeting the requirements of subsection (2)
379 must submit a written application to the county by January 1,
380 2013.
381 Section 5. This act shall take effect July 1, 2012.