By the Committee on Agriculture; and Senators Baker and Bennett

575-06677-08 20082246c1

A bill to be entitled

An act relating to land development regulation; amending s. 163.3162, F.S.; providing for the use of certain lands surrounding an agricultural enclave; creating a rebuttable presumption for the imposition of certain development conditions relating to agricultural enclaves; providing a timeframe for submitting certain information relating to proposed plan amendments; creating a rebuttable presumption for denial of or failure to approve plan amendments relating to agricultural enclaves; providing concurrency standards for agricultural enclaves in relation to previously approved development contiguous to the enclave; amending s. 163.3245, F.S.; revising provisions relating to optional sector plans; providing applicability to certain pending applications; amending s. 163.3164, F.S.; revising the definition of "agricultural enclave"; providing an effective date.

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

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

163.3162 Agricultural Lands and Practices Act.--

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33) may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is presumed to be consistent with rule 9J-5.006(5), Florida Administrative Code, and may include land uses,

densities, and intensities of use that are consistent with the uses, densities, and intensities of use of the industrial, commercial, or residential areas that surround the parcel. This presumption may be rebutted by clear and convincing evidence. Each application for a comprehensive plan amendment under this subsection for a parcel larger than 640 acres must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights. Notwithstanding the provisions of a comprehensive plan, the local government may not prohibit land uses, densities, and intensities of use that are consistent with the uses, densities, and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Densities and intensities of uses for an agricultural enclave shall, at minimum, be calculated as the average density or intensity of uses within 3 miles of the perimeter of the parcel. If a local government imposes development conditions that prevent the owner from achieving consistent densities and intensities of use pursuant to this subsection, the owner may apply to the circuit court for appropriate relief pursuant to s. 70.001. The imposition of such conditions is presumed to impose an inordinate burden. This presumption may be rebutted by clear and convincing evidence.

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

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

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

(c) Notwithstanding the provisions of a comprehensive plan, after review by the state land planning agency, the owner shall respond to any objections, recommendations, or comments issued by

the agency pursuant to s. 163.3184(6). If the department has not issued any objections, recommendations, or comments, or if the owner has responded to any objections, recommendations, or comments and the local government denies or fails to approve the amendment within the time period specified in s. 163.3184(7), such denial or failure to approve the amendment is presumed to impose an inordinate burden, and the owner may apply to the circuit court for appropriate relief pursuant to s. 70.001. A plan amendment reviewed by the land planning agency under this subsection is presumed to be consistent with the provisions of rule 9J-5.006(5), Florida Administrative Code. This presumption may be rebutted by clear and convincing evidence.

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

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

(f) An agricultural enclave shall not be subjected to higher concurrency standards than the concurrency standards applied to previously approved development within 3 miles of the perimeter of the enclave.

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

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

Section 2. Subsections (6) and (7) of section 163.3245, Florida Statutes, are renumbered as subsections (7) and (8),

respectively, and a new subsection (6) is added to that section, to read:

163.3245 Optional sector plans.--

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

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

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

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

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

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

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

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

2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of

such property is existing industrial, commercial, or residential development;

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

(e) Does not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.

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