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HB 1015, Engrossed 2

2006 Legislature

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

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28 of the option to obtain certain consumptive use permits;  
29 creating s. 373.407, F.S.; providing for memoranda of  
30 agreement regarding qualification for agricultural-related  
31 exemptions; amending s. 601.992, F.S.; authorizing the  
32 Department of Citrus or the Department of Agriculture and  
33 Consumer Services to collect financial payments for  
34 certain not-for-profit entities under certain  
35 circumstances; authorizing fees and rulemaking; providing  
36 an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Paragraphs (a) and (c) of subsection (4),  
41 paragraph (a) of subsection (5), and paragraph (c) of subsection  
42 (6) of section 70.001, Florida Statutes, are amended to read:

43 70.001 Private property rights protection.--

44 (4)(a) Not less than 180 days prior to filing an action  
45 under this section against a governmental entity, a property  
46 owner who seeks compensation under this section must present the  
47 claim in writing to the head of the governmental entity, except  
48 that if the property is classified as agricultural pursuant to  
49 s. 193.461, the notice period is 90 days. The property owner  
50 must submit, along with the claim, a bona fide, valid appraisal  
51 that supports the claim and demonstrates the loss in fair market  
52 value to the real property. If the action of government is the  
53 culmination of a process that involves more than one  
54 governmental entity, or if a complete resolution of all relevant

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55 | issues, in the view of the property owner or in the view of a  
56 | governmental entity to whom a claim is presented, requires the  
57 | active participation of more than one governmental entity, the  
58 | property owner shall present the claim as provided in this  
59 | section to each of the governmental entities.

60 | (c) During the 90-day-notice period or the 180-day-notice  
61 | period, unless extended by agreement of the parties, the  
62 | governmental entity shall make a written settlement offer to  
63 | effectuate:

64 | 1. An adjustment of land development or permit standards  
65 | or other provisions controlling the development or use of land.

66 | 2. Increases or modifications in the density, intensity,  
67 | or use of areas of development.

68 | 3. The transfer of developmental rights.

69 | 4. Land swaps or exchanges.

70 | 5. Mitigation, including payments in lieu of onsite  
71 | mitigation.

72 | 6. Location on the least sensitive portion of the  
73 | property.

74 | 7. Conditioning the amount of development or use  
75 | permitted.

76 | 8. A requirement that issues be addressed on a more  
77 | comprehensive basis than a single proposed use or development.

78 | 9. Issuance of the development order, a variance, special  
79 | exception, or other extraordinary relief.

80 | 10. Purchase of the real property, or an interest therein,  
81 | by an appropriate governmental entity.

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82 11. No changes to the action of the governmental entity.

83  
84 If the property owner accepts the settlement offer, the  
85 governmental entity may implement the settlement offer by  
86 appropriate development agreement; by issuing a variance,  
87 special exception, or other extraordinary relief; or by other  
88 appropriate method, subject to paragraph (d).

89 (5) (a) During the 90-day-notice period or the 180-day-  
90 notice period, unless a settlement offer is accepted by the  
91 property owner, each of the governmental entities provided  
92 notice pursuant to paragraph (4) (a) shall issue a written  
93 ripeness decision identifying the allowable uses to which the  
94 subject property may be put. The failure of the governmental  
95 entity to issue a written ripeness decision during the  
96 applicable 90-day-notice period or 180-day-notice period shall  
97 be deemed to ripen the prior action of the governmental entity,  
98 and shall operate as a ripeness decision that has been rejected  
99 by the property owner. The ripeness decision, as a matter of  
100 law, constitutes the last prerequisite to judicial review, and  
101 the matter shall be deemed ripe or final for the purposes of the  
102 judicial proceeding created by this section, notwithstanding the  
103 availability of other administrative remedies.

104 (6)

105 (c)1. In any action filed pursuant to this section, the  
106 property owner is entitled to recover reasonable costs and  
107 attorney fees incurred by the property owner, from the  
108 governmental entity or entities, according to their

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109 proportionate share as determined by the court, from the date of  
110 the filing of the circuit court action, if the property owner  
111 prevails in the action and the court determines that the  
112 settlement offer, including the ripeness decision, of the  
113 governmental entity or entities did not constitute a bona fide  
114 offer to the property owner which reasonably would have resolved  
115 the claim, based upon the knowledge available to the  
116 governmental entity or entities and the property owner during  
117 the 90-day-notice period or the 180-day-notice period.

118 2. In any action filed pursuant to this section, the  
119 governmental entity or entities are entitled to recover  
120 reasonable costs and attorney fees incurred by the governmental  
121 entity or entities from the date of the filing of the circuit  
122 court action, if the governmental entity or entities prevail in  
123 the action and the court determines that the property owner did  
124 not accept a bona fide settlement offer, including the ripeness  
125 decision, which reasonably would have resolved the claim fairly  
126 to the property owner if the settlement offer had been accepted  
127 by the property owner, based upon the knowledge available to the  
128 governmental entity or entities and the property owner during  
129 the 90-day-notice period or the 180-day-notice period.

130 3. The determination of total reasonable costs and  
131 attorney fees pursuant to this paragraph shall be made by the  
132 court and not by the jury. Any proposed settlement offer or any  
133 proposed ripeness decision, except for the final written  
134 settlement offer or the final written ripeness decision, and any  
135 negotiations or rejections in regard to the formulation either

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136 of the settlement offer or the ripeness decision, are  
 137 inadmissible in the subsequent proceeding established by this  
 138 section except for the purposes of the determination pursuant to  
 139 this paragraph.

140 Section 2. Subsection (5) is added to section 163.3162,  
 141 Florida Statutes, to read:

142 163.3162 Agricultural Lands and Practices Act.--

143 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The  
 144 owner of a parcel of land defined as an agricultural enclave  
 145 under s. 163.3164(33) may apply for an amendment to the local  
 146 government comprehensive plan pursuant to s. 163.3187. Such  
 147 amendment is presumed to be consistent with rule 9J-5.006(5),  
 148 Florida Administrative Code, and may include land uses and  
 149 intensities of use that are consistent with the uses and  
 150 intensities of use of the industrial, commercial, or residential  
 151 areas that surround the parcel. This presumption may be rebutted  
 152 by clear and convincing evidence. Each application for a  
 153 comprehensive plan amendment under this subsection for a parcel  
 154 larger than 640 acres must include appropriate new urbanism  
 155 concepts such as clustering, mixed-use development, the creation  
 156 of rural village and city centers, and the transfer of  
 157 development rights in order to discourage urban sprawl while  
 158 protecting landowner rights.

159 (a) The local government and the owner of a parcel of land  
 160 that is the subject of an application for an amendment shall  
 161 have 180 days following the date that the local government  
 162 receives a complete application to negotiate in good faith to

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163 reach consensus on the land uses and intensities of use that are  
164 consistent with the uses and intensities of use of the  
165 industrial, commercial, or residential areas that surround the  
166 parcel. Within 30 days after the local government's receipt of  
167 such an application, the local government and owner must agree  
168 in writing to a schedule for information submittal, public  
169 hearings, negotiations, and final action on the amendment, which  
170 schedule may thereafter be altered only with the written consent  
171 of the local government and the owner. Compliance with the  
172 schedule in the written agreement constitutes good-faith  
173 negotiations for purposes of paragraph (c).

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

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

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

- 197            1. The Wekiva Study Area, as described in s. 369.316; or
- 198            2. The Everglades Protection Area, as defined in s.  
 199 373.4592(2).

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

202        163.3164 Local Government Comprehensive Planning and Land  
 203 Development Regulation Act; definitions.--As used in this act:

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

- 206            (a) Is owned by a single person or entity;
- 207            (b) Has been in continuous use for bona fide agricultural  
 208 purposes, as defined by s. 193.461, for a period of 5 years  
 209 prior to the date of any comprehensive plan amendment  
 210 application;

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

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



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215        2. Property that the local government has designated, in  
 216 the local government's comprehensive plan, zoning map, and  
 217 future land use map, as land that is to be developed for  
 218 industrial, commercial, or residential purposes, and at least 75  
 219 percent of such property is existing industrial, commercial, or  
 220 residential development;

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

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

233        Section 4. Section 259.047, Florida Statutes, is created  
 234 to read:

235        259.047 Acquisition of land on which an agricultural lease  
 236 exists.--

237        (1) When land with an existing agricultural lease is  
 238 acquired in fee simple pursuant to this chapter or chapter 375,  
 239 the existing agricultural lease may continue in force for the  
 240 actual time remaining on the lease agreement. Any entity  
 241 managing lands acquired under this section must consider

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242 existing agricultural leases in the development of a land  
243 management plan required under s. 253.034.

244 (2) Where consistent with the purposes for which the  
245 property was acquired, the state or acquiring entity shall make  
246 reasonable efforts to keep lands in agricultural production  
247 which are in agricultural production at the time of acquisition.

248 Section 5. Paragraph (a) of subsection (2) of section  
249 373.0361, Florida Statutes, is amended to read:

250 373.0361 Regional water supply planning.--

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

254 (a) A water supply development component for each water  
255 supply planning region identified by the district which  
256 includes:

257 1. A quantification of the water supply needs for all  
258 existing and future reasonable-beneficial uses within the  
259 planning horizon. The level-of-certainty planning goal  
260 associated with identifying the water supply needs of existing  
261 and future reasonable-beneficial uses shall be based upon  
262 meeting those needs for a 1-in-10-year drought event. Population  
263 projections used for determining public water supply needs must  
264 be based upon the best available data. In determining the best  
265 available data, the district shall consider the University of  
266 Florida's Bureau of Economic and Business Research (BEBR) medium  
267 population projections and any population projection data and  
268 analysis submitted by a local government pursuant to the public

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269 workshop described in subsection (1) if the data and analysis  
270 support the local government's comprehensive plan. Any  
271 adjustment of or deviation from the BEBR projections must be  
272 fully described, and the original BEBR data must be presented  
273 along with the adjusted data.

274 2. A list of water supply development project options,  
275 including traditional and alternative water supply project  
276 options, from which local government, government-owned and  
277 privately owned utilities, regional water supply authorities,  
278 multijurisdictional water supply entities, self-suppliers, and  
279 others may choose for water supply development. In addition to  
280 projects listed by the district, such users may propose specific  
281 projects for inclusion in the list of alternative water supply  
282 projects. If such users propose a project to be listed as an  
283 alternative water supply project, the district shall determine  
284 whether it meets the goals of the plan, and, if so, it shall be  
285 included in the list. The total capacity of the projects  
286 included in the plan shall exceed the needs identified in  
287 subparagraph 1. and shall take into account water conservation  
288 and other demand management measures, as well as water resources  
289 constraints, including adopted minimum flows and levels and  
290 water reservations. Where the district determines it is  
291 appropriate, the plan should specifically identify the need for  
292 multijurisdictional approaches to project options that, based on  
293 planning level analysis, are appropriate to supply the intended  
294 uses and that, based on such analysis, appear to be permissible  
295 and financially and technically feasible. The list of water

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296 supply development options must contain provisions that  
297 recognize that alternative water supply options for agricultural  
298 self-suppliers are limited.

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

301 a. An estimate of the amount of water to become available  
302 through the project.

303 b. The timeframe in which the project option should be  
304 implemented and the estimated planning-level costs for capital  
305 investment and operating and maintaining the project.

306 c. An analysis of funding needs and sources of possible  
307 funding options. For alternative water supply projects the water  
308 management districts shall provide funding assistance in  
309 accordance with s. 373.1961(3).

310 d. Identification of the entity that should implement each  
311 project option and the current status of project implementation.

312 Section 6. Section 373.2234, Florida Statutes, is amended  
313 to read:

314 373.2234 Preferred water supply sources.--The governing  
315 board of a water management district is authorized to adopt  
316 rules that identify preferred water supply sources for  
317 consumptive uses for which there is sufficient data to establish  
318 that a preferred source will provide a substantial new water  
319 supply to meet the existing and projected reasonable-beneficial  
320 uses of a water supply planning region identified pursuant to s.  
321 373.0361(1), while sustaining existing water resources and  
322 natural systems. At a minimum, such rules must contain a

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323 description of the preferred water supply source and an  
324 assessment of the water the preferred source is projected to  
325 produce. If an applicant proposes to use a preferred water  
326 supply source, that applicant's proposed water use is subject to  
327 s. 373.223(1), except that the proposed use of a preferred water  
328 supply source must be considered by a water management district  
329 when determining whether a permit applicant's proposed use of  
330 water is consistent with the public interest pursuant to s.  
331 373.223(1)(c). A consumptive use permit issued for the use of a  
332 preferred water supply source must be granted, when requested by  
333 the applicant, for at least a 20-year period and may be subject  
334 to the compliance reporting provisions of s. 373.236(4)~~(3)~~.  
335 Nothing in this section shall be construed to exempt the use of  
336 preferred water supply sources from the provisions of ss.  
337 373.016(4) and 373.223(2) and (3), or be construed to provide  
338 that permits issued for the use of a nonpreferred water supply  
339 source must be issued for a duration of less than 20 years or  
340 that the use of a nonpreferred water supply source is not  
341 consistent with the public interest. Additionally, nothing in  
342 this section shall be interpreted to require the use of a  
343 preferred water supply source or to restrict or prohibit the use  
344 of a nonpreferred water supply source. Rules adopted by the  
345 governing board of a water management district to implement this  
346 section shall specify that the use of a preferred water supply  
347 source is not required and that the use of a nonpreferred water  
348 supply source is not restricted or prohibited.

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349 Section 7. Present subsections (2) and (3) of section  
 350 373.236, Florida Statutes, are renumbered as subsections (3) and  
 351 (4), respectively, present subsection (4) is renumbered as  
 352 subsection (5) and amended, and a new subsection (2) is added to  
 353 that section, to read:

354 373.236 Duration of permits; compliance reports.--

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

361 (5)~~(4)~~ Permits approved for the development of alternative  
 362 water supplies shall be granted for a term of at least 20 years.  
 363 However, if the permittee issues bonds for the construction of  
 364 the project, upon request of the permittee prior to the  
 365 expiration of the permit, that permit shall be extended for such  
 366 additional time as is required for the retirement of bonds, not  
 367 including any refunding or refinancing of such bonds, provided  
 368 that the governing board determines that the use will continue  
 369 to meet the conditions for the issuance of the permit. Such a  
 370 permit is subject to compliance reports under subsection (4)~~(3)~~.

371 Section 8. Section 373.407, Florida Statutes, is created  
 372 to read:

373 373.407 Memorandum of agreement for an agricultural-  
 374 related exemption.--No later than July 1, 2007, the Department  
 375 of Agriculture and Consumer Services and each water management

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376 | district shall enter into a memorandum of agreement under which  
 377 | the Department of Agricultural and Consumer Services shall  
 378 | assist in a determination by a water management district as to  
 379 | whether an existing or proposed activity qualifies for the  
 380 | exemption in s. 373.406(2). The memorandum of agreement shall  
 381 | provide a process by which, upon the request of a water  
 382 | management district, the Department of Agriculture and Consumer  
 383 | Services shall conduct a nonbinding review as to whether an  
 384 | existing or proposed activity qualifies for an agricultural-  
 385 | related exemption in s. 373.406(2). The memorandum of agreement  
 386 | shall provide processes and procedures by which the Department  
 387 | of Agriculture and Consumer Services shall undertake this review  
 388 | effectively and efficiently and issue a recommendation.

389 | Section 9. Section 601.992, Florida Statutes, is amended  
 390 | to read:

391 | 601.992 Collection of dues and other payments on behalf of  
 392 | certain nonprofit corporations engaged in market news and grower  
 393 | education.--The Florida Department of Citrus or the Department  
 394 | of Agriculture and Consumer Services or their successors ~~its~~  
 395 | ~~successor~~ may collect dues, contributions, or any other  
 396 | financial payment upon request by, and on behalf of, any not-  
 397 | for-profit corporation, and its related not-for-profit  
 398 | corporations, located in this state which receives payments or  
 399 | dues from its members. Such not-for-profit corporation must be  
 400 | engaged, to the exclusion of agricultural commodities other than  
 401 | citrus, in market news and grower education solely for citrus  
 402 | growers, and must have at least 5,000 members who are engaged in

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403 | growing citrus in this state for commercial sale. The department  
404 | may adopt rules pursuant to ss. 120.536(1) and 120.54 to  
405 | implement this section. The rules may establish indemnity  
406 | requirements for the requesting corporation and for fees to be  
407 | charged to the corporation which are sufficient but do not  
408 | exceed the amount necessary to ensure that any direct costs  
409 | incurred by the department in implementing this section are  
410 | borne by the requesting corporation and not by the department.

411 |         Section 10. This act shall take effect upon becoming a  
412 | law.