

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1133

Agriculture

SPONSOR(S): Poppell

TIED BILLS:

IDEN./SIM. BILLS: SB 1974

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	16 Y, 0 N, As CS	Kaiser	Reese
2) Military & Local Affairs Policy Committee	14 Y, 0 N	Rojas	Hoagland
3) General Government Policy Council			
4) Finance & Tax Council			
5)			

SUMMARY ANALYSIS

CS/HB 1133 addresses various issues relating to agriculture.

The bill prohibits counties from imposing a fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works of the district permit, or implements best management practices (BMPs)¹.

The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations.² The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to January 1, 2009, are not limited by the provisions of the bill.

The bill creates the "Agricultural Nuisance Claim Waiver Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located within 1,000 feet of agricultural land, to have the applicant sign and submit to the political subdivision a written waiver of nuisance claims against the neighboring agricultural land. The bill provides that the waiver is a public record.

The bill exempts farm fences from the Florida Building Code as well as any city or county code, and exempts nonresidential farm buildings and fences from county or municipal fees.

The mandate provision appears to apply because the bill prohibits counties from imposing certain assessments or fees relating to stormwater management on land classified as agricultural if the agricultural operation has an agricultural discharge permit or implements BMPs. The bill also exempts nonresidential farm buildings and fences from any county or municipal fee. The effective date of this legislation is July 1, 2009.

¹ The BMPs interim measures or regulations must have been adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

² *Id*

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:

In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural³, if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

CS/HB 1133 prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works of the district permit or implements BMPs.

The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to January 1, 2009, are not limited by the provisions of the bill.

Section 2:

Current law⁴ states if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

³ Section 193.461, F.S.

⁴ Section 823.14(4), F.S.

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that is harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there is at least 10 times that many that is never brought to the attention of the department.

The bill creates the "Agricultural Nuisance Claim Waiver Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located within 1,000 feet of agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written waiver of nuisance claims against the neighboring agricultural land.

The bill provides specific information to be included in the waiver and provides that such waiver is a public record.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Section 3:

Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998 when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, then-Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney, "...*The plain language of sections 553.73(7)(c)⁵ and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm...*"

The bill exempts farm fences from the Florida Building Code and nonresidential farm buildings and fences from county or municipal codes and fees.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S.; prohibiting a county from enforcing certain ordinances, resolutions, regulations, rules, or policies relating to land classified as agricultural under certain circumstances; and, prohibiting the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

⁵ This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

Section 2: Creates s. 163.3163, F.S.; creating the “Agricultural Nuisance Claim Waiver Act.” providing legislative findings and intent; providing definitions; requiring applicants for certain development permits to sign and submit a waiver regarding nuisance claims against neighboring agricultural land; and, providing for such waiver to become a public record.

Section 3: Amends s. 604.50, F.S.; providing an exemption for farm fences from the Florida Building Code; and, providing an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See “Fiscal Comment” section below.

2. Expenditures:

See “Fiscal Comment” section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with assessments or fees by counties or municipalities.

D. FISCAL COMMENTS:

Provisions of this bill that (1) prohibit a county or municipality from imposing an assessment or fee for storm water management on certain lands, and (2) exempt nonresidential farm buildings and fences from county or municipal codes or fees will have an negative indeterminate impact on local government revenues as determined by the Revenue Estimating Conference.

In 2008, EDR was able to identify eleven county stormwater utilities. Of those, six indicated that they exempted agricultural parcels from paying any assessment or fee and five indicated that they did not provide such an exemption. In March of 2008, EDR conducted a telephone survey of the five County stormwater utilities that had indicated that they did not fully exempt agricultural lands. The purpose of the survey was to attempt to identify the potential revenue that might be lost if the provisions of the proposed legislation relating to stormwater management assessments or fees were enacted. Two of the five counties responded to the survey as follows:

<u>County</u>	<u>Potential Lost Revenue</u>
Sarasota	\$118,500
Pasco	\$71,924

Total \$190,424

The amendment to s. 604.50, F.S., expands the exemption afforded to nonresidential farm buildings from the state, city and county building codes to any nonresidential farm building or farm fence from

any county or municipal code or fee. This would appear to include land use planning, environmental and virtually any local code or fee, including locally imposed impact fees.

According to a survey conducted by LCIR in 2006, no local governments reported imposing impact fees specifically on agricultural buildings. In a limited telephone survey conducted in March 2008 respondents indicated that local construction projects were typically evaluated for infrastructure impacts such as public safety or transportation at the time of plan review and permitting. Since nonresidential farm buildings are not subject to state and local building codes they often escape this scrutiny. Only one county, Jefferson County, reported imposing a fee on a nonresidential farm building in the past. According to Jefferson County staff, they imposed a public safety impact fee on a 4,650 square foot nonresidential agricultural building due to its intended office and warehouse uses. The fee was believed to be \$1,488.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because the bill reduces the authority that cities and counties have to raise revenues. The bill prohibits a county or municipality from imposing an assessment or fee for storm water management on certain lands and exempts non-residential farm buildings and fences from fees. The Revenue Estimating Conference has not yet determined if the fiscal impact is significant or if an exemption to the mandate provision applies.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Agriculture and Natural Resources Policy Committee adopted one amendment to HB 1133. The amendment specifies the actual permits (National Pollutant Discharge Elimination System permit, environmental resource permit, or works of the district permit) that exempt a farm operation from county fees and assessments for stormwater management.