

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 203 Agricultural Lands

**SPONSOR(S):** Local and Federal Affairs Committee, Agriculture & Natural Resources Subcommittee, Beshears and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
2) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Lukis	Rojas
3) Finance & Tax Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

In 2003, the Legislature passed the Agricultural Lands and Practices Act, which in part, prohibits counties from adopting any duplicative policy that limits activity of a bona fide farm or farm operation on agricultural land if such activity is already regulated through or by any of the following:

- best management practices (BMPs);
- interim measures, or regulations adopted as rules under ch. 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD) as part of a statewide or regional program; or
- United States Department of Agriculture, United States Army Corps of Engineers, or the United States Environmental Protection Agency.

CS/HB 203 expands the prohibition described above to include not just counties, but any “governmental entity,” as defined in law. The bill also prohibits any governmental entity from charging a fee upon such farms or farm operations. Lastly, the bill amends the definition of “governmental entity” to exclude water management districts.

The bill does not appear to have a fiscal impact on state government. In addition, the Revenue Estimating Conference determined that the fiscal impact on local governments would be insignificant.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

In 2003, the Legislature passed the Agricultural Lands and Practices Act (Act),<sup>1</sup> which is codified in s. 163.3162, F.S. The Act prohibits counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation<sup>2</sup> on agricultural land if such activity is already regulated through or by any of the following:

- best management practices (BMPs);
- interim measures, or regulations adopted as rules under ch. 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD) as part of a statewide or regional program; or
- United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

Prior to the passage of this legislation, some counties enacted measures to regulate various agricultural operations in the state that were duplicative and in some cases more restrictive than those already implemented through BMPs or an existing governmental regulatory program.

In 2010, the legislature further amended s. 163.3162, F.S., because while the Act banned the adoption of future county restrictive measures, it did not explicitly prohibit the enforcement of existing county measures. Therefore, legislation was passed<sup>3</sup> to prohibit the enforcement of existing county measures.

Currently, this prohibition applies only to counties. However, some agricultural associations have reported that municipalities are now starting to adopt ordinances and regulations that are duplicative in nature to existing regulatory requirements.

Section 163.3162(2)(d), F.S., provides that “governmental entity” has the same meaning as provided in s. 164.1031, F.S. The term does not include a water control district established under ch. 298, F.S., or a special district created by a special act for water management purposes.

#### Effect of Proposed Changes

The bill amends the definition of “governmental entity” in s. 163.3162(2)(d), F.S. to exclude water management districts.

The bill also amends s. 163.3162(3)(a), F.S., to prohibit any “governmental entity,”<sup>4</sup> instead of just counties, from adopting or enforcing any ordinance, resolution, rule, or policy to prohibit, restrict,

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<sup>1</sup> CS/CS/SB 1660, Ch. 2003-162, L.O.F.

<sup>2</sup> Bona fide farm or farm operation is defined in s. 193.461.F.S., as good faith commercial agricultural use of the land based on the length of time the land has been so used, whether the use has been continuous, indication that an effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, and size as it relates to the specific agricultural use, among other things.

<sup>3</sup> CS/HB 7103, Ch. 2011-7, L.O.F. (CS/HB 7103 was vetoed by the Governor; overridden during the 2011 legislative session and became law, the Governor’s veto notwithstanding.)

<sup>4</sup> “Governmental entity” is defined in s. 163.3162(2)(d), F.S., as having the same meaning as provided in s. 164.1031, F.S., except that the term does not include a water control district established under chapter 298, F.S., or a special district created by a special act for water management purposes. Section 164.1031, F.S., defines “governmental entity” as including any local and regional governmental entities. “Local governmental entities” includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. “Regional governmental entities” includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural, if such activity is regulated through or by any of the following:

- implemented BMPs;
- interim measures, or regulations adopted as rules under ch. 120, F.S., by DEP, DACS, or a WMD as part of a statewide or regional program; or
- United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

Lastly, the bill creates a new paragraph (b) in s. 163.3162,(3), F.S., which prohibits any governmental entity from charging a fee upon an activity of a bona fide farm operation on land classified as agricultural, if such activity is regulated through or by any of the abovementioned entities.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 163.3162, F.S.; amending the definition of “governmental entity;” prohibiting governmental entities under certain conditions from adopting or enforcing prohibitions, restrictions, regulations, or other limitations on an activity of a bona fide farm operation on land classified as agricultural; and, prohibiting governmental entities under certain conditions from charging a fee on an activity of a bona fide farm operation on land classified as agricultural.

**Section 2:** Provides an effective date of July 1, 2013.

**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:

By prohibiting governmental entities from charging fees on certain agricultural activities occurring on agricultural lands, the bill appears to have a possible negative impact on local government revenues. However, the Revenue Estimating Conference determined in an analysis dated February 28, 2013 that the fiscal impact on local governments would be insignificant.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Certain agricultural producers would be spared the expense associated with adhering to duplicative regulations or paying certain fees or assessments imposed by governmental entities in the state.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill may have a negative fiscal impact on local government revenues. However, an exemption applies because the Revenue Estimating Conference determined in an analysis dated February 28, 2013 that the fiscal impact on local governments would be insignificant.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Agriculture & Natural Resources Subcommittee adopted two amendments to HB 203.

- The first amendment specifies that, for purposes of section 163.3162, F.S., water management districts are not included in the definition of a governmental entity.
- The second amendment removes the phrase "or charge an assessment or fee upon such activity" from s. 163.3162(3)(a), F.S., in the bill, and creates a new paragraph (b) in s. 163.3162(3), F.S., specifying that a governmental entity, as defined in this section of law, may not charge an assessment or fee upon any activity of a bona fide farm operation if such activity is already regulated by a state or federal agency.

On March 22, 2013, the Local and Federal Affairs Committee adopted one amendment to CS/HB 203.

- The amendment removes the prohibition on governmental entities from charging an assessment on any activity of a bona fide farm operation if such activity is already regulated by a state or federal agency.

This analysis has been updated to reflect these amendments.