

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 304

INTRODUCER: Community Affairs Committee and Senator Stargel

SUBJECT: Agritourism

DATE: November 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 304 adds language of legislative intent to s. 570.85, F.S., to promote agritourism and remove duplicative regulatory authority over it. The bill prohibits a local government from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural under s. 193.461(3)(b), F.S., in an unincorporated area.

The bill also adds “civic” and “ceremonial” activities to the enumerated list of agritourism activities under s. 570.86, F.S.

The bill amends s. 570.87, F.S., adding that lands classified as agricultural under s. 193.461, F.S., cannot be divested of that classification as long as the land remains used primarily for bona fide agricultural purposes.

II. Present Situation:

Agricultural Property Classification

Section 193.461, F.S., provides that each county’s property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used “primarily for bona fide agricultural purposes.”¹ Agricultural purposes include, but are not limited to: horticulture;

¹ Section 193.461(3)(b), F.S.

floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used primarily for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.²

Property appraisers are required to reclassify land as nonagricultural when:

- The land is diverted from an agricultural to a nonagricultural use; or
- The land is no longer being utilized for agricultural purposes.³

Agritourism

When farmers open their lands to the general public for the purposes of agricultural related education and entertainment, they put their lands to a new beneficial use that may increase their farms' economic viability.⁴ Responding to concerns over local regulation and burdensome liability, the Florida Legislature enacted legislation in 2013 to define and encourage agritourism.⁵ Section 570.86(1), F.S., defines "agritourism activity" as:

any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.

Following this legislation, local governments may not enact a regulation, rule, or policy that would limit an agritourism activity on land classified as agricultural land under s. 193.461, F.S.⁶ However, this does not preclude local governments from enforcing such regulations that were adopted prior to the passage of SB 1106 in 2013.

Protection from Liability

So long as an agritourism operator⁷ complies with the posting and notification requirements of s. 570.89, F.S., the owner of the land, the agritourism operator, and employer or employees are provided limited liability protection against injury, death, or damage to participants.⁸ Liability is not limited or prevented if the owner, operator, employer, or employees:⁹

- Commit an act that constitutes gross negligence or willful or wanton disregard for the safety of the participant; or
- Intentionally injure the participant.

² Section 193.461(5), F.S.

³ Section 193.461(4), F.S.

⁴ Florida Farm Bureau, Agritourism, *available at* <http://www.floridafarmbureau.org/files/resources/AgritourismBookletPrint.pdf> (last visited November 4, 2015).

⁵ Chapter 2013-179, Laws of Fla.; SB 1106 (2013).

⁶ Section 570.85, F.S.

⁷ Section 570.86(2), F.S.

⁸ Section 570.88(1), F.S.

⁹ Section 570.88(2), F.S.

Protection from Local Government Regulation

Section 570.85, F.S., provides that in accordance with the legislative intent to “eliminate duplication of regulatory authority over agritourism,” a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity. This prohibition on local governments primarily pertains to ordinances to restrict hours of operation, number of participants, or parking for agritourism activities. The statutory prohibition addresses adoption of ordinances existing at the time of enactment.

The prohibition does not extend to enactment of new local government ordinances related to construction of new or additional structures intended primarily to accommodate members of the general public, which would still be subject to all building and zoning laws.¹⁰ Furthermore, the prohibition does not limit the powers and duties of a local government to address an emergency as provided in ch. 252, F.S.¹¹

III. Effect of Proposed Changes:

Section 1 adds language of intent to promote agritourism and to eliminate duplicative regulatory authority over it. Additionally, it prohibits a local government from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land in an unincorporated area.

Section 2 adds “civic” and “ceremonial” activities to the enumerated list of agritourism activities under s. 570.86, F.S.

Section 3 adds to s. 570.87, F.S., that lands classified as agricultural may not be divested of that classification as long as they remain used primarily for bona fide agricultural purposes.

Section 4 provides that this act shall take effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Section 570.86(1), F.S.

¹¹ Section 570.85(1), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that the bill prevents local governments from enforcing any ordinances which would limit agritourism activity in unincorporated areas, farms may be able to supplement their revenues with additional revenue from agritourism.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 570.85, 570.86, and 570.87.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on November 17, 2015:

Adds agritourism intent language to s. 570.85, F.S.; adds civic and ceremonial activities to the enumerated types of agritourism activities under s. 570.86, F.S.; specifies that lands classified as agricultural under s. 193.461, F.S., cannot be divested of that classification as long as the land remains used primarily for bona fide agricultural purposes; and specifies that the bill exempts agritourism activities from local regulations in unincorporated areas.

B. Amendments:

None.