

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 Fiscal Policy

BILL: CS/CS/SB 304

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; and Senator Stargel

SUBJECT: Agritourism

DATE: January 15, 2016

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>Aldana</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 304 amends the legislative intent in s. 570.85, F.S., to express the Legislature's intent to promote agritourism. 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 land under s. 193.461, F.S. However, the bill specifies that a local government is not limited by the prohibitions when adopting or enforcing local regulations that address substantial off-site impacts of agritourism activities.

The bill adds "civic" and "ceremonial" activities to the enumerated list of agritourism activities defined in s. 570.86, F.S.

The bill amends s. 570.87, F.S., to provide 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; 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 An “agritourism activity” is:

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.⁵

Farm operations are encouraged to engage in agritourism “in order to promote and perpetuate agriculture throughout the state.”⁶

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 or death of, or damage to, participants.⁸

Liability is not limited or prevented if the owner, operator, employer, or an employee:

- Commits an act that constitutes gross negligence or willful or wanton disregard for the safety of the participant; or
- Intentionally injures the participant.⁹

Protection from Local Government Regulation

In 2013, the Legislature enacted legislation to “eliminate duplication of regulatory authority over agritourism.”¹⁰ A local government may not adopt an ordinance, regulation, rule, or policy that

¹ Section 193.461(3)(b), F.S.

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/wp-content/uploads/2015/09/AgritourismBooklet07.pdf> (last visited January 10, 2016).

⁵ Section 570.86(1), F.S.

⁶ Section 570.87(1), F.S.

⁷ Section 570.86(2), F.S.

⁸ Section 570.88(1), F.S.

⁹ Section 570.88(2), F.S.

¹⁰ Section 570.85, F.S. See ch. 2013-179, Laws of Fla.; SB 1106 (2013).

prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461, F.S. This prohibition on local government regulation primarily pertains to ordinances that restrict hours of operation, number of participants, or parking for agritourism activities.¹¹ However, this does not preclude local governments from enforcing such regulations that were adopted prior to July 1, 2013.¹²

The prohibition does not extend to enactment of new local government regulations 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.¹³ 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.¹⁴

Land Classification

Bona fide farm or agricultural lands classified as such will not be divested of the classification as a result of agritourism activity on the land.¹⁵ Florida, like most states, has adopted use-value assessment for the purpose of ad valorem taxation of agricultural lands. Use-value assessment results in a lower value of agricultural property relative to an assessment at fair market value. Lands classified as agricultural are taxed at the *current* income-earning potential of the land in agricultural production, rather than at the highest and best use of the land. The agricultural classification can provide significant tax savings for the property owner due to the lower value assessment.¹⁶

III. Effect of Proposed Changes:

Section 1 amends the legislative intent in s. 570.85, F.S., to express the Legislature's intent to promote agritourism. Additionally, 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 land.

The bill specifies that a local government's ability to address substantial off-site impacts of agritourism activities is not limited by the prohibition on adopting or enforcing local government regulations related to agritourism activity on agricultural land.

Section 2 adds "civic" and "ceremonial" activities to the enumerated list of agritourism activities defined in s. 570.86, F.S.

¹¹ *Supra* note 4.

¹² The 2013 legislation as effective July 1, 2013. *See* ch. 2013-179, Laws of Fla.

¹³ The definition of an "agritourism activity" excludes such activity. Section 570.86(1), F.S.

¹⁴ Section 570.85(1), F.S.

¹⁵ Section 570.87(1), F.S.

¹⁶ *See generally* University of Florida IFAS Extension, Florida Forest Stewardship, *Property Taxes and Greenbelt*, available at

http://www.sfrc.ufl.edu/Extension/florida_forestry_information/planning_and_assistance/greenbelt_property_taxes.html?v=bG6GXmtVGm0 (last visited January 11, 2016).

Section 3 amends to s. 570.87, F.S., to provide 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 the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill prevents local governments from enforcing regulations that limit agritourism activity, farms may be able to earn additional revenue from agritourism.

C. Government Sector Impact:

This bill has no impact on state funds.

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/CS by Fiscal Policy on January 14, 2016:

The committee substitute removes the limitation for agricultural lands *in unincorporated areas* to be excluded from the adoption or enforcement of local government regulations. The CS specifies that a local government is not limited when adopting or enforcing local regulations that address substantial off-site impacts of agritourism activities.

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.