

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 Agriculture Committee

BILL: CS/SB 2060

INTRODUCER: Agriculture Committee and Senator Dean

SUBJECT: Agriculture

DATE: March 19, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute addresses the following issues related to agriculture and consumer services. It:

- ⊘ Prohibits a county government to impose a tax, assessment or fee for stormwater management on agricultural land, if the agricultural operation has an agricultural discharge permit or implements best-management practices adopted by the state;
- ⊘ Expands eligibility for exemption from a local business tax receipt for persons who sell farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom;
- ⊘ Provides indemnity for an agricultural landowner for an easement or any other right secured by a water management district for access to recreational lands provided to the public by a district;
- ⊘ Delineates requirements for a tomato farmer, packer, repacker, or handler to be considered in compliance with state food safety microbial standards and guidelines;
- ⊘ Authorizes the Department of Agriculture and Consumer Services to adopt by rule comprehensive best-management practices for agricultural production and food safety;
- ⊘ Revises the labeling and advertising requirements for dressed poultry;

- ☐ Revises the definition of “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products;
- ☐ Expands county and municipal exemptions for nonresidential farm buildings to include permits and impact fees;
- ☐ Expands the materials used in agricultural operations that can be openly burned; and
- ☐ Requires operators who conduct computer-based electronic sweepstakes game promotions to receive written approval from the department.

This bill amends ss. 163.3162, 205.064, 373.1395, 570.07, 583.13, 604.15, 604.50, 823.145, and 849.094, Florida Statutes.

This bill creates s. 500.70, Florida Statutes.

II. Present Situation:

Section 1

The 2003 Legislature created the “Agricultural Lands and Practices Act”. It prohibits a county from adopting an ordinance, resolution, regulation, rule, or policy that would limit an activity of a bona fide farm operation on land that is classified as agricultural land, if such activity is regulated through best-management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under ch. 120, F.S., as part of a statewide or regional program. It also prohibits a county from regulating an activity that is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency. This bill eliminates a county’s authority to “enforce” a current ordinance, resolution, regulation, rule, or policy that would limit an activity of a bona fide farm operation on agricultural lands.

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs. The revenue thus generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit are the only ones who pay. This bill addresses the duplication of regulation that agricultural operations are experiencing because five counties are charging stormwater management fees even though the agricultural operation has an agricultural discharge permit or is implementing best-management practices. If an agricultural operation is paying to manage its own stormwater, it should not be required to duplicate this effort by paying a county stormwater tax, assessment, or fee.

Section 2

Section 205.022, F.S., defines “person” to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to “natural persons” engaged in the selling of certain agricultural products.

Currently, cities and counties are interpreting the term “natural person” to exclude corporations, partnerships and other non-natural persons for exemption purposes.

Section 3

If a water management district owns land that it wants to open to the public, it is sometimes necessary to obtain an easement through agricultural lands to make the land accessible. Some of the issues that agricultural landowners have raised include liability, should a person get injured on the easement going to or from the public land.

Sections 4 & 5

The 2007 Legislature amended s. 570.07, F.S., to allow the Department of Agriculture and Consumer Services to use any of its trained personnel to perform inspections and to establish and adopt requirements for enhancing food safety of tomatoes. It also authorized the Division of Fruit and Vegetables to perform food safety inspections, under the Tomato Good Agricultural Practices inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. The division has worked with the Florida tomato industry in creating and implementing good agricultural practices guidelines and standards and conducts an annual audit and inspection program to ensure compliance. The bill delineates requirements for a compliance with state food safety microbial standards and guidelines and specifies that the tomato farmer, packer, repacker, or handler is considered to have acted in good faith if good agricultural practices and best-management practices have been used. This bill clarifies the department’s authority to adopt rules concerning comprehensive best management practices for agricultural production and food safety.

Section 6

On April 10, 2007, the Food Safety and Inspection Service of the United States Department of Agriculture informed the Florida Department of Agriculture and Consumer Services that the state’s labeling requirements for poultry grading terms are expressly preempted by federal law and cannot be enforced for poultry products that are sold in Florida. Current language requires poultry packed in containers to be clearly marked with a label showing a grade that “...may be expressed in the term “premium,” “good,” or “standard,” or as the grade of another state or federal agency the standards of quality of which, by law, are equal to the standards of quality provided by this law and rules promulgated hereunder.” Removing all references to “grade” in s. 583.13, F.S., will eliminate the disparity that currently exists between federal and state statutes.

Section 7

The Agricultural License and Bond Law covers business transitions for growers selling to companies with a business presence in Florida. Currently, the nature of transitions for foliage products is grower to grower sales or sales outside of the provision of the existing law. This bill reinstates the exemption which existed prior to changes that were made by the 2005 Legislature.

Section 8

Sections 553.73(7)(c) and 604.50, F.S., exempt 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.

Section 9

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or, orders. Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. This bill conforms s. 823.145, F.S., concerning disposal by open burning of mulch plastic used in agricultural operations to s. 403.707(2)(e), F.S.

Section 10

Game promotions are contests, games of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present. An operator is any person, firm, corporation, or associations or agent or employee who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization. Currently, an operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 must provide the Department of Agriculture and Consumer Services with certain information, but operators of game promotions involving less than \$5,000 do not.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to prohibit a county from enforcing any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land, if such activity is regulated by best-management practices or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Department of Environmental Protection. It prohibits a county government to impose an assessment or fee for stormwater management on agricultural land, if the agricultural operation has an agricultural discharge permit or implements best-management practices that have been developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under chapter 120.

Section 2 amends s. 205.064, F.S., to expand eligibility for exemption from a local business tax receipt for persons who sell farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom.

Section 3 amends s. 373.1395, F.S., to provide indemnity for an agricultural landowner for an easement or any other right secured by a water management district for access to recreational lands provided to the public by a district. The bill delineates what is covered by indemnification for landowners and the water management districts. It also specifies that any water management district or agricultural landowner is not relieved of any liability that would exist for gross negligence or a deliberate, willful, or malicious injury to a person or property.

Section 4 creates s. 500.70, F.S., to provide incentive for tomato farmers, packers, repackers, or handlers to implement applicable good agricultural practices and best-management practices. The bill delineates requirements for such person to be in compliance with state food safety microbial standards or guidelines unless a violation of or noncompliance with such measures can be shown through inspections.

Section 5 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services to adopt by rule comprehensive best-management practices for agricultural production and food safety.

Section 6 amends s. 583.13, F.S., to revise labeling and advertising requirements for dressed poultry by removing any reference to the term “grade”. This will remove the conflict that currently exists between state and federal statutes.

Section 7 amends s. 604.15, F.S., to revise the definition of “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products.

Section 8 amends s. 604.50, F.S., to expand county and municipal exemptions for nonresidential farm buildings to include permits and impact fees.

Section 9 amends s. 823.145, F.S., to make this section of law consistent with s. 403.707(2)(e), F.S., relating to materials used in agricultural operations that can be openly burned. The bill provides that the open burning must not be a public nuisance or adversely affect the environment or the public health.

Section 10 amends s. 849.094, F.S., to require an operator who conducts a computer-based electronic sweepstakes game promotion in connection with the sale of a consumer product to receive written approval from the Department of Agriculture and Consumer Services. An exemption is provided for an operator who has conducted game promotions in the state for five consecutive years and who has not had any civil, criminal, or administrative actions within that five-year period.

Section 11 provides that this act shall take effect July 1, 2008.

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:

Based on the data available, the Revenue Estimating Conference is not able to provide fiscal information at this time.

B. Private Sector Impact:

See above.

C. Government Sector Impact:

See above.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/SB 2060 is different from SB 2060 in that it:

- ☐ Removes the word “tax” in reference to a prohibition on counties to impose an assessment or fee for stormwater management on land classified as agricultural land.
- ☐ Revises labeling and advertising requirements for dressed poultry by removing any reference to the term “grade” in order to remove the conflict that currently exists between state and federal statutes.
- ☐ Requires an operator who conducts a computer-based electronic sweepstakes game promotion in connection with the sale of a consumer product to receive written approval from the Department of Agriculture and Consumer Services.

B. Amendments:

None.