

HB 1133

2009

1 A bill to be entitled
2 An act relating to agriculture; amending s. 163.3162,
3 F.S.; prohibiting a county from enforcing certain limits
4 on the activity of a bona fide farm operation on
5 agricultural land under certain circumstances; prohibiting
6 a county from charging agricultural lands for stormwater
7 management assessments and fees under certain
8 circumstances; exempting certain wetland protection
9 ordinances, regulations, and rules adopted before a
10 specified date from provisions restricting a county's
11 powers over the activity on agricultural land; creating s.
12 163.3163, F.S.; creating the "Agricultural Nuisance Claim
13 Waiver Act"; providing a short title; providing
14 legislative findings and intent; defining the terms
15 "agricultural land" and "farm operation"; requiring an
16 applicant for certain development permits to sign and
17 submit to a political subdivision a waiver of certain
18 nuisance claims against neighboring agricultural land as a
19 condition of the political subdivision issuing the
20 permits; specifying information to be included in the
21 waiver; providing that a waiver is a public record;
22 amending s. 604.50, F.S.; exempting farm fences from the
23 Florida Building Code; exempting nonresidential farm
24 buildings and farm fences from county and municipal codes
25 and fees; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

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29 Section 1. Subsection (4) of section 163.3162, Florida
30 Statutes, is amended to read:
31 163.3162 Agricultural Lands and Practices Act.--
32 (4) DUPLICATION OF REGULATION.--Except as otherwise
33 provided in this section and s. 487.051(2), and notwithstanding
34 any other law, including any provision of chapter 125 or this
35 chapter, a county may not exercise any of its powers to adopt or
36 enforce any ordinance, resolution, regulation, rule, or policy
37 to prohibit, restrict, regulate, or otherwise limit an activity
38 of a bona fide farm operation on land classified as agricultural
39 land pursuant to s. 193.461, if such activity is regulated
40 through implemented best management practices, interim measures,
41 or regulations adopted as rules under chapter 120 ~~developed~~ by
42 the Department of Environmental Protection, the Department of
43 Agriculture and Consumer Services, or a water management
44 district ~~and adopted under chapter 120~~ as part of a statewide or
45 regional program; or if such activity is expressly regulated by
46 the United States Department of Agriculture, the United States
47 Army Corps of Engineers, or the United States Environmental
48 Protection Agency. A county may not charge an assessment or fee
49 for stormwater management on land classified as agricultural
50 land pursuant to s. 193.461, if the farm operation has an
51 agricultural discharge permit or implements best management
52 practices adopted as rules under chapter 120 by the Department
53 of Environmental Protection, the Department of Agriculture and
54 Consumer Services, or a water management district as part of a
55 statewide or regional program, unless the county adopts an
56 ordinance that provides credit against the assessment or fee for

57 the water quality and flood control provided by the farm
58 operation through its permitted stormwater management system or
59 implementation of the best management practices.

60 (a) When an activity of a farm operation takes place
61 within a wellfield protection area as defined in any wellfield
62 protection ordinance adopted by a county, and the implemented
63 best management practice, regulation, or interim measure does
64 not specifically address wellfield protection, a county may
65 regulate that activity pursuant to such ordinance. This
66 subsection does not limit the powers and duties provided for in
67 s. 373.4592 or limit the powers and duties of any county to
68 address an emergency as provided for in chapter 252.

69 (b) This subsection may not be construed to permit an
70 existing farm operation to change to a more excessive farm
71 operation with regard to traffic, noise, odor, dust, or fumes
72 where the existing farm operation is adjacent to an established
73 homestead or business on March 15, 1982.

74 (c) This subsection does not limit the powers of a
75 predominantly urbanized county with a population greater than
76 1,500,000 and more than 25 municipalities, not operating under a
77 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.
78 VIII of the Constitution of 1885, as preserved by s. 6(e), Art.
79 VIII of the Constitution of 1968, which has a delegated
80 pollution control program under s. 403.182 and includes drainage
81 basins that are part of the Everglades Stormwater Program, to
82 enact ordinances, regulations, or other measures to comply with
83 the provisions of s. 373.4592, or which are necessary to
84 carrying out a county's duties pursuant to the terms and

85 conditions of any environmental program delegated to the county
 86 by agreement with a state agency.

87 (d) For purposes of this subsection, a county ordinance
 88 that regulates the transportation or land application of
 89 domestic wastewater residuals or other forms of sewage sludge
 90 shall not be deemed to be duplication of regulation.

91 (e) This subsection does not limit a county's powers to
 92 enforce its applicable wetland protection ordinances,
 93 regulations, or rules adopted before January 1, 2009.

94 Section 2. Section 163.3163, Florida Statutes, is created
 95 to read:

96 163.3163 Applications for development permits; waiver of
 97 nuisance claims against neighboring agricultural land.--

98 (1) This section may be cited as the "Agricultural
 99 Nuisance Claim Waiver Act."

100 (2) The Legislature finds that nonagricultural land which
 101 neighbors agricultural land may adversely affect the
 102 agricultural production and farm operations of the agricultural
 103 land and may lead to the agricultural land's conversion to
 104 urban, suburban, or other nonagricultural uses. The purpose of
 105 this section is to give notice to an applicant for a local land
 106 use permit, building permit, or certificate of occupancy for
 107 nonagricultural land which neighbors agricultural land of the
 108 following before issuance of the permit or certificate:

109 (a) The state's support for preservation of agricultural
 110 land and farm operations; and

111 (b) The adverse effects of residing or operating a
 112 nonagricultural business on property that neighbors agricultural
 113 land and farm operations.

114 (3) As used in this section, the term:

115 (a) "Agricultural land" means land classified as
 116 agricultural land pursuant to s. 193.461.

117 (b) "Farm operation" has the same meaning as defined in s.
 118 823.14.

119 (4) (a) A political subdivision, before issuing a local
 120 land use permit, building permit, or certificate of occupancy
 121 for nonagricultural land located within 1,000 feet of
 122 agricultural land, shall require that, as a condition of issuing
 123 the permit or certificate, the applicant for the permit or
 124 certificate must sign and submit to the political subdivision a
 125 written waiver of nuisance claims against the neighboring
 126 agricultural land in substantially the following form:

127
 128 WAIVER OF NUISANCE CLAIMS
 129 AGAINST NEIGHBORING AGRICULTURAL LAND

130
 131 I, ...(name of applicant)..., understand that my property
 132 located at ...(address of nonagricultural land)... is
 133 located within 1,000 feet of agricultural land located at
 134 ...(address of agricultural land)..., which is used for
 135 farm operations and may not be compatible with the
 136 intended use of my property.

137 I understand that, during any 24-hour period, farm
 138 operations on the agricultural land may cause adverse

139 effects which result in discomfort or inconvenience for a
 140 person using my property.

141 I understand that these adverse effects may include,
 142 but are not limited to, noise, odors, fumes, dust, smoke,
 143 burning, vibrations, insects, rodents, or the operation of
 144 machinery, including aircraft.

145 I understand that farm operations conducted according
 146 to accepted customs and standards and existing laws and
 147 regulations may cause these adverse effects.

148 I understand that a person who resides or operates a
 149 nonagricultural business on property that neighbors
 150 agricultural land should accept these adverse effects as a
 151 normal and necessary aspect of residing or working in a
 152 neighborhood with a strong rural character and an active
 153 agricultural sector.

154 I understand, and waive any objection to, the adverse
 155 effects to my property caused by farm operations on the
 156 agricultural land identified in this waiver.

157 I agree not to bring any claim against the owner of
 158 the agricultural land, or against ...(name of political
 159 subdivision)..., which asserts that any farm operation on
 160 the agricultural land is a nuisance.

161 Signature: ...(signature of applicant)....

162 Date: ...(date)....

163
 164 (b) A waiver of nuisance claims against neighboring
 165 agricultural land submitted to a political subdivision under
 166 paragraph (a) is a public record.

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167 Section 3. Section 604.50, Florida Statutes, is amended to
168 read:

169 604.50 Nonresidential farm buildings and farm
170 fences.--Notwithstanding any other law to the contrary, any
171 nonresidential farm building or farm fence is exempt from the
172 Florida Building Code and any county or municipal ~~building~~ code
173 or fee. For purposes of this section, the term "nonresidential
174 farm building" means any building or support structure that is
175 used for agricultural purposes, is located on a farm that is not
176 used as a residential dwelling, and is located on land that is
177 an integral part of a farm operation or is classified as
178 agricultural land under s. 193.461. The term "farm" is as
179 defined in s. 823.14.

180 Section 4. This act shall take effect July 1, 2009.