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 Community Affairs Committee

BILL:	SB 1974
INTRODUCER:	Senators Bennett and Baker
SUBJECT:	Agriculture
DATE:	March 25, 2009
REVISED:	03/31/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	**Favorable**
2.	Molloy	Yeatman	CA	**Fav/1 amendment**
3.			JU	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☒	Significant amendments were recommended

I. Summary:

The bill prohibits counties from enforcing any regulations on land classified as agricultural if the activity being enforced is regulated by Best Management Practices (BMPs), interim measures, or regulations adopted by a state agency or a water management under chapter 120, F.S.[1] The bill provides that under certain conditions, a county may not charge an assessment or fee for stormwater management on land classified as agricultural land under s. 193.461, F.S., and provides that a county may enforce wetland protection ordinances, regulations, or rules adopted before January 1, 2009.

The bill creates the "Agricultural Nuisance Claim Waiver Act" which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for non agricultural land located within 1,000 feet of agricultural land, to have the permit/certificate applicant sign and submit to the political subdivision a written waiver of nuisance claims against the neighboring agricultural land, which waiver will be a public record.

[1] Chapter 120, Florida Statutes, is the Administrative Procedures Act, which provides, in part, requirements for a grant of rulemaking authority to an agency, rulemaking and notice requirements, and requirements for rule challenges.

The bill exempts nonresidential farm buildings and farm fences from county or municipal fees. The existing exemption from the Florida Building Code for nonresidential farm buildings is expanded to include farm fences, and nonresidential farm buildings and farm fences are exempt from any county or municipal code requirement.

This bill substantially amends sections 163.3162 and 604.50, Florida Statutes. It creates section 163.3163, Florida Statutes.

II. Present Situation:

Agricultural Lands and Practices Act - In 2003, the Legislature passed the Agricultural Lands and Practices Act, s. 163.3162, F.S., to prohibit counties from adopting any ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation on agricultural land if such activity is regulated through BMPs; interim measures; or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The Agricultural Land and Practices Act that banned the adoption of future local government restrictive measures did not explicitly prohibit the enforcement of existing local government measures.

Stormwater Fees - A number of counties adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue 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 from stormwater utility fees are the only ones who pay. This creates a duplicative financial burden for the agricultural operation that is already paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

Right to Farm - The "Florida Right to Farm Act," s. 823.14, F.S., has been law since 1979. In this act, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. The Legislature found that agricultural activities in urban areas are potential grounds for lawsuits based on the theory of nuisance. The purpose of the Right to Farm Act was to protect reasonable agricultural activities on farm land from nuisance suits. Generally, no farm in operation for a year or more since its established date of operation which was not a nuisance at the established date of operation, can be a public or private nuisance if the farm operations conform to generally accepted agricultural and management practices. If an existing farm's operations expand to a more excessive operation with regard to noise, odor, dust, or fumes, it can be considered a nuisance if it is adjacent to an established homestead or business as of March 15, 1982. Growers and farmers report that this act has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct agriculture operations.

Attorney General Opinion (AGO 2006-07)
In 2006, the Suwannee County Commission asked then Attorney General Robert Butterworth to opine on the question of whether the provisions of the "Right to Farm Act" limiting duplicative regulatory authority by local governments prevent a local government to regulate a dairy farming operation beyond the regulations imposed by state agencies. The Attorney General opined that "if a determination is made that this farm was adjacent to an established homestead or business on March 15, 1982, and the fertilizing practices of the farm have changed to a "more excessive" operation that involves significant or substantial degradation in the locale, the county may enforce regulations applicable to those changes."

***J-II Investments, Inc. and Johnny Petrandis v Leon County, Florida*[2]**
Leon County, Florida brought an action against the plaintiffs alleging that development activities were being performed on the plaintiffs' property without a permit. The trial court granted the county's motion for summary judgment and the property owners appealed asserting that the land is used for agricultural purposes (aquaculture and livestock), and that Leon County did not have regulatory authority over agricultural activity. The 1st DCA held that the statute prevented counties from adopting ordinances relating to the regulation of agriculture but did not preclude the county from enforcing county regulations already in place at the time the "Right to Farm Act" was enacted into law. The court noted "the plain, unambiguous terms of section 163.3162(4), F.S., prevent counties from *adopting* ordinances relating to agriculture. The statute does not address the enforcement of provisions already in place,"…"since the Legislature did not include the word "enforce" in section 163.3162(4), F.S., we cannot assume that they intended to preempt all existing county regulations."

Florida Building Code - Nonresidential farm buildings have been exempt from building codes for many years. In 2001, then-Attorney General Robert A. Butterworth, in a response to the Gilchrist Assistant County Attorney (Florida Attorney General Advisory Legal Opinion, AGO 2001-71, October 10, 2001), wrote "…The plain language of sections 553.73(7)(c)[3] and 604.50, Florida Statutes, exempts 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…" Despite this, there have been recent instances of some counties and municipalities assessing impact fees and requiring permits for nonresidential buildings even though the buildings are exempt from building codes and are not inspected.

Home Rule Revenue Sources[4] **-** Under Florida's Constitution, local governments possess strong home rule powers, and may utilize a variety of revenue sources for funding services and improvements without express statutory authorization. Franchise fees, impact fees, special assessments, and user fees are examples of these home rule revenue sources. In implementing fee programs and special assessments, a local government's goal is to create an assessment or fee that avoids classification as a tax by the courts. If an assessment or fee does not meet the case

[2] 908 So.2d 1140
[3] The cited statute section has since changed to s. 553.73(9)(c), F.S.
[4] *2008 Local Government Financial Information Handbook, Part Two, pgs. 19-32*

law requirements and is classified as a tax, then the local government must have general law authorization.

Special Assessments - As established in Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided; and second, the assessment must be fairly and reasonably apportioned among the beneficiaries of the service. Examples of special assessments include garbage disposal, sewer improvements, fire protection, fire and rescue services, and stormwater management services.

Proprietary Fee - Proprietary fees are imposed under the assets of a local government's exclusive right. The imposed fee is reasonable in relation to the privilege or service provided by the local government, or the fee payer receives a special benefit from the local government. Proprietary fees include franchise fees, user fees, and utility fees.

Regulatory Fees - Regulatory fees are imposed under the local government's exercise of police powers in the exercise of its sovereign functions. Two principles guide the use and application of such fees: the imposed fee cannot exceed the cost of the regulatory activity, and the fee is generally required to be applied solely to pay the cost of the regulatory activity for which it is imposed.

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 under s. 193.461, F.S., if:

- Such activity is regulated by BMPs, interim measures, or regulations adopted by rules opted under chapter 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 statewide or regional program; or
- If such activity is expressly regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

The bill also prohibits a county from charging a fee or assessment for stormwater management on classified agricultural land if the farm operation has an agricultural discharge permit or has implemented BMPs adopted as rules under chapter 120, F.S., by DEP, DACS, or a WMD unless the county provides a credit for the water quality and flood control provided by the farm operation.

A county may enforce any wetland protection ordinance, regulation, or rule adopted before January 1, 2009.

Section 2 creates s. 163.3163, F.S., which may be cited as the Agricultural Nuisance Claim Waiver Act. The bill establishes the Legislature's finding that nonagricultural land may have an adverse affect on neighboring agricultural land which may lead to its conversion to nonagricultural use, and it declares the state's intent to make known its support for the preservation of agricultural land and farm operations. It incorporates by reference the definitions

of "agricultural land" and "farm operation" used elsewhere in the statutes.

The bill requires a political subdivision to condition the issuance of a local land use permit, a building permit, or a certificate of occupancy for nonagricultural land located within 1,000 feet of agricultural land, upon the political subdivision obtaining a written "Waiver of Nuisance Claims Against Neighboring Agricultural Land" which waiver should include the following acknowledgments:

- Applicant's property is within 1,000 feet of agricultural land which is used for farm operations which may be incompatible with applicant's intended use.
- Farm operations may cause numerous adverse effects resulting in discomfort and inconvenience in any 24-hour period.
- Adverse effects include, but are not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, or operation of machinery, including aircraft.
- Customary farm operations may cause adverse effects even if conducted within applicable laws and regulations.
- Users of property adjoining agricultural land should accept the adverse effects of being in a rural, agricultural area.
- Applicant waives any objection to the adverse effects on his property that may arise from the neighboring farm operation on the property described in the waiver.
- Applicant agrees not to bring a claim against the owner of the agricultural land or the political subdivision where it is located based on the farm operation being a nuisance.
- The waiver is a public record.

Section 3 amends s. 604.50, F.S., to expand the building code exemption for nonresidential farm buildings to specifically include farm fences, and to exempt the nonresidential farm buildings and farm fences from any county or municipal code requirement. The bill exempts nonresidential farm buildings and farm fences from county or municipal fees.

Section 4 provides that this act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution provides:

"Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

The bill appears to restrict the home rule authority of local governments to raise revenue by prohibiting the imposition of a fee or assessment for stormwater management on agricultural lands under certain conditions, and by exempting farm buildings and farm fences from any county or municipal fee and any county or municipal code. If the fiscal impact to local governments exceeds $1.9 million the bill will require a two-thirds vote of the members of each house of the Legislature to be enacted.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See comments in Private Sector and Government Sector.

B. Private Sector Impact:

The bill would relieve an agricultural landowner from being assessed a stormwater fee or an impact fee for a farm building or farm fence. The amount of these fees is indeterminate at this time.

C. Government Sector Impact:

The Revenue Estimating Conference determined on March 20, 2009, that the provisions of the bill have a minimal impact on local government and no impact on state government, but noted the following:

"The amendment to s. 604.50, F.S., expands the exemption afforded to nonresidential farm buildings from the state, city and county building codes to any nonresidential farm building or farm fence from county or municipal code or fee. This would appear to include land use planning, environmental and virtually any local code or fee, including locally imposed impact fees."

Also, in 2008, the Legislature's Office of Economic and Demographic Research (EDR) was able to identify eleven county stormwater utilities. Of those, six indicated that they exempted agricultural parcels from paying any assessment or fee, and five indicated that they did not provide such an exemption. EDR conducted a telephone survey of the utilities which indicated that they did not fully exempt agricultural lands to determine the revenue loss if revisions relating to stormwater management assessments or fees were enacted. Sarasota County estimated a revenue loss of $118,500 and Pasco County estimated a revenue loss of $72,000.

With respect to impact fees, EDR noted that in 2008, a limited telephone survey indicated that only Jefferson County had imposed an impact fee on a nonresidential farm building in the past. The fee was a public safety impact fee of $1,488 on a 4,650 square foot nonresidential agricultural building due to its intended office and warehouse uses.

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.)

None.

B. Amendments:

Barcode 464490 by Community Affairs on March 31, 2009:
This "strike-all" amendment clarifies conditions under which a county may not charge an assessment or fee for stormwater management on agricultural lands. If the agricultural operation has an National Pollutant Discharge Elimination System (NPDES) permit, an Environmental Resource Permit (ERP), a works-of-the-district permit issued by a water management district, or is implementing BMPs adopted by rule by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, then a local government may not impose an assessment or fee for stormwater management on the agricultural operation.

The amendment creates the "Agricultural Land Acknowledgement Act" to provide that before issuing a land use permit, a building permit, or a certificate of occupancy for non-agricultural lands located contiguous to agricultural lands, a political subdivision must require that the permit applicant sign a written acknowledgement stating the applicant's understanding that the farm operation on the neighboring land will be conducted according to generally accepted agricultural practices under the "Right to Farm Act." A standard form is created. (WITH TITLE AMENDMENT)