HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 707 Agriculture
SPONSOR(S): Community & Military Affairs Subcommittee, Crisafulli and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Gibson	Hoagland
2) Rulemaking & Regulation Subcommittee		Jensen	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

HB 707 addresses various issues relating to agriculture. The bill prohibits, with some limited exceptions, counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs). The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations. The bill does not limit the powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency or a water management district.

The bill creates the "Agricultural Land Acknowledgement Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale. The Department of Agriculture and Consumer Services is granted rulemaking authority to implement the provisions of the act.

The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by the person in the state, from obtaining a local business tax receipt. The bill amends the definition of "farm tractor" to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses current law enacted in 2005 and returns tropical foliage to exempt status from the provisions of the License and Bond law[1]. The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations. The definition of "nonresidential farm building" is clarified to more accurately define what types of buildings are exempt from county or municipal codes and fees.

The bill allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state, providing agricultural producers with increased insurance options. The bill amends chapter 823, F.S., to mirror the language in chapter 403, F.S., regarding the materials used in agricultural production that may be burned in the open.

The Revenue Estimating Conference on February 24, 2011, estimated that limiting the ability of counties to charge stormwater management assessments or fees on certain agricultural properties would have a total negative fiscal impact on the five counties currently charging fees ranging from $500,000 in FY 2011-12, to $700,000 in FY 2014-15. The remainder of the bill was estimated to have an insignificant fiscal impact on state and local revenues.

The effective date of the bill is July 1, 2011.

[1] Ss. 604.15-604.34, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

Gubernatorial Veto
HB 707 contains identical language, with the exception of technical drafting changes, to House Bill 7103, which was passed unanimously by both houses of the Legislature during the 2010 Legislative Session.[2] On May 15, 2010, Governor Charlie Crist vetoed HB 7103. The Governor's veto letter expressed "concerns about the restrictions placed on local governments that are contained in this bill."[3]

ON MARCH 24, 2011, HB 7103 (2010), WAS ENACTED NOTWITHSTANDING THE VETO AND BECAME EFFECTIVE IMMEDIATELY.

Issues Addressed

County Regulations
Current Situation
In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural[4], if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

Effect of the Bill
The bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit or implements BMPs[5].

The bill permits counties that adopted ordinances prior to March 1, 2009, to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for the water quality or flood control benefit of implementation of BMPs[6]; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be of equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

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[2] *See* http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=44447&SessionId=64 (last visited: March 18, 2011).
[3] Veto of Fla. HB 7103 (2010) (letter from Gov. Crist to Interim Sec'y of State Dawn Roberts, May 15, 2010) (on file with Sec'y of State, R.A. Gray Building, Tallahassee, Fla.).
[4] S. 193.461, F.S.
[5] The BMPs interim measures or regulations must have been adopted as rules under chapter 120, F.S. 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.
[6] *Id*.

Nuisance Protection

Current Situation

Current law[7] states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

Effect of the Bill

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rulemaking authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Occupational License Exemption

Current Situation

Florida law[8] exempts any natural person from obtaining an occupational license to sell agricultural products[9] that were grown in the state by said natural person. While the statutes provide a definition

[7] S. 823.14(4), F.S.

[8] S. 205.064, F.S.

for “person,” no definition is provided for “natural person.” Hence, the statute is interpreted differently in different counties in regards to the exemption.

Effect of the Bill
The bill strikes the word “natural” to exempt any “person” from obtaining an occupational license.

Farm Equipment
Current Situation
Florida law provides various exemptions from obtaining a driver’s license, one of those being “…any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.”[10] Currently, a farm tractor is defined in statute[11] as “a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.”

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

Effect of the Bill
The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Tropical Foliage
Current Situation
The Florida License and Bond Law (law) [12] was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term “agricultural products” to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption.

Effect of the Bill
This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

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[9] Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.
[10] S. 322.04 (1)(b), F.S.
[11] S. 322.01(20), F.S.
[12] Ss. 604.15-604.34, F.S.

Nonresidential Farm Buildings

Current Situation

Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998, when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney:

> ". . . [T]he plain language of sections 553.73(7)(c)[13] 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. . . ."

Effect of the Bill

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of "nonresidential farm building" is amended to clarify that it may be a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

Crop Insurance

Current Situation

Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

Effect of the Bill

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a

[13] This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

Open Burning

Current Situation

There are currently two sections in statute[14] that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning.

Effect of the Bill

The bill amends the language in chapter 823, F.S., to mirror the language in chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162(4), F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

Section 2: Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

Section 3: Amends s. 205.064(1), F.S.; revises exemption eligibility for a local business tax receipt.

Section 4: Amends s. 322.01(20), F.S.; revises the definition of "farm tractor."

Section 5: Amends s. 604.15(1), F.S.; revises the definition of "agricultural products."

Section 6: Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

Section 7: Adds subsection (7) to s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes tropical foliage from the definition of agricultural products that are required to be licensed and bonded. The Revenue Estimating Conference on February 24, 2011, estimated that

[14] ss. 403.707(2)(e) and 823.145, F.S.

the removal will reduce revenue to the Department of Agriculture and Consumer Services by $18,900 annually. The fiscal impact is insignificant.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference on February 24, 2011, reported that there are five counties that currently charge stormwater assessments or fees on agricultural properties. The conference estimated that eliminating the ability to charge stormwater assessments or fees for certain agricultural lands would have a total fiscal impact ranging from $500,000 in FY 2011-12 to $700,000 in FY 2014-15.

The conference also estimated that exempting "persons" instead of "natural persons" from certain local business taxes would have an insignificant fiscal impact on local governments.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being charged with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, this will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution, may apply because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees. The bill also prohibits cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom.

Article VII, section 18(d) of the Florida Constitution, provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact", in the context of Article VII, section 18(d), to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents, or $1.9 million. The average fiscal impact, including any

offsetting effects over the long term, is also considered.[15] The Revenue Estimating Conference estimated that this bill would have total impacts ranging from $500,000 in FY 2011-12 to $700,000 in FY 2014-2015, so it appears that the bill would fall under the insignificant fiscal impact exemption in Article VII, section 18(d).

If it is later determined that the bill has more than an insignificant fiscal impact, a two-thirds vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rulemaking authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2011, the Community & Military Affairs Subcommittee adopted one technical amendment to HB 707 and reported the bill favorably as a committee substitute. The amendment removed a cross reference added by bill drafting and inserted language in order to make the bill identical to that of CS/HB 7103 passed by the Legislature in 2010 and vetoed by Governor Crist.

[15] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), *available at* http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf (last visited March 18, 2011).