

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 927 Agritourism

SPONSOR(S): State Affairs Committee; Agriculture & Natural Resources Subcommittee; Raschein and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
2) Civil Justice Subcommittee	10 Y, 2 N	Cary	Bond
3) State Affairs Committee	17 Y, 0 N, As CS	Kaiser	Camechis

SUMMARY ANALYSIS

Agritourism provides the agricultural industry with an opportunity to supplement income while also increasing public awareness of the importance of agriculture and increasing recreational opportunities for the public.

Agritourism is broadly defined as the integration of tourism into current agricultural food and fiber operations. Agritourism includes farming, ranching, historical, cultural, or harvest-your-own activities.

The bill amends current law to provide that a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural lands under the greenbelt law. The bill also provides that "agritourism activity" does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public.

In addition, the bill provides that an agritourism operator or owner of land on which agritourism occurs is not liable for injury, death, damage, or loss to a participant resulting from the inherent risks of agritourism activities if a specific notice of risk is posted. If the required notice of risk is posted, the bill provides for an affirmative defense of assumption of risk for an agritourism operator to present at trial in any action for damages.

The preceding provisions do not prevent or limit the liability of an agritourism operator if he or she:

- Commits an act or omission that constitutes negligence of willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
- Has actual knowledge, or reasonably should have known, of a dangerous condition on the land or with the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and fails to make that danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
- Intentionally injures the participant.

The bill does not appear to have a fiscal impact on state government. The bill may have a small, indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Agritourism

According to a study by the Institute of Food and Agricultural Sciences,¹ agritourism is the combination of the top two industries in Florida: tourism and agriculture. Agritourism uses agricultural activities to entertain and educate visitors as well as to sustain agricultural resources and culture.

Agritourism is broadly defined as the integration of tourism into current agricultural food and fiber operations. Generally, a primary purpose is to supplement the farm's income and increase recreational diversity. Agritourism also can increase public awareness of the importance of agriculture and increasing recreational opportunities for the public. Agritourism may include any of the following:

- Farm and specialty product markets;
- Product processing, including wineries;
- Fairs, festivals, and sporting events;
- Petting or riding activities involving horses or farm animals;
- Farm dining;
- Wildlife and fishing;
- Floriculture;
- Educational programs, including heritage, cultural and ethnic education;
- Arts and crafts;
- Farm and ranch vacations;
- Tours; and
- Pick-, cut-, gather-, or grow-your-own activities.²

Potential benefits of agritourism include:

- Increasing profitability for farms and ranches;
- Educating the public about the importance of agriculture and its contributions to the economy and quality of life;
- Reducing friction in the agricultural-urban interface; and
- Increasing demand for locally grown produce to stimulate the local economy.³

The Florida Constitution allows the legislature to classify agricultural land for ad valorem taxation purposes.⁴ Under current law, a property appraiser must classify every parcel of land in the county as agricultural or non-agricultural to arrive at the bona fide status. This is known as the land's "greenbelt" assessment. To determine if a parcel of land is a bona fide agricultural operation and classified as "greenbelt," the appraiser must consider factors such as:

- The length of time the land has been used for agricultural purposes;
- Whether the use has been continuous;

¹ University of Florida, IFAS Extension. http://smallfarms.ifas.ufl.edu/environment_and_recreation/tourism/overview.html (last viewed March 22, 2013).

² Potential Impacts of Agritourism in South Miami-Dade County, University of Florida, IFAS Extension. edis.ifas.ufl.edu/pdf/FE/FE63700.pdf.

³ *Id.*

⁴ Article VII, s. 4, Fla. Const.

- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices;
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- Such other factors as may become applicable.⁵

Generally, a property is appraised according to the highest and best use of the property.⁶ When a parcel of land is classified as “greenbelt,” it is given a property value based upon its agricultural use rather than the market value of the land. Such a classification generally provides the property with a lower property tax assessment. Current law provides that conducting an agritourism activity on a bona fide farm or on agricultural lands classified as “greenbelt” does not limit, restrict, or divest the land of that classification.⁷

In 2007,⁸ the Legislature authorized the Department of Agriculture and Consumer Services (Department) to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist Enterprise Florida, Inc., convention and visitor’s bureaus, tourist development councils, economic development organizations, and local governments in their agritourism initiatives. In doing so, the Legislature suggested that the Department focus its agritourism efforts on rural and urban communities.⁹ The Legislature defined “agritourism activity” as any activity carried out on a farm or ranch or in a forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historical, cultural, harvest-your-own, or nature-based activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.¹⁰

Premises Liability

In a negligence cause of action, a plaintiff must prove that a lawful duty exists, that the duty was breached, and that the plaintiff suffered damages as a result of the breach.¹¹ A landowner’s duty to persons on his/her land depends on the status of the person. There are three basic categories of persons on land: invitees, licensees, and trespassers.¹²

An invitee is a person who was invited to enter the land. Florida law defines invitation to mean “that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs.”¹³ A landowner owes certain duties to invitees, and can be sued in tort should the landowner fail a duty and a person is injured due to that failure. The duties owed to most invitees are:

- The duty to keep property in reasonably safe condition;
- The duty to warn of concealed dangers which are known or should be known to the landowner, and which the invitee cannot discover through the exercise of due care; and
- The duty to refrain from wanton negligence or willful misconduct.¹⁴

⁵ Section 193.461(3)(b), F.S.

⁶ Section 193.011(2), F.S.

⁷ Section 570.962, F.S.

⁸ Chapter 2007-244, L.O.F.

⁹ Section 570.96, F.S.

¹⁰ Section 570.961, F.S.

¹¹ See *Drew v. Tenet St. Mary’s, Inc.*, 46 So.3d 1165 (Fla. 4th DCA 2010).

¹² See *Wood v. Camp*, 284 So.2d 691 (Fla. 1973).

¹³ Section 768.075(3)(a)1., F.S.

¹⁴ *Burton v. MDC PGA Plaza Corp.*, 78 So.3d 732 (Fla. 4th DCA 2012).

A licensee is a narrower category of person that is on another's property solely for his or her own convenience without invitation expressed or implied.¹⁵ The duty of care to a licensee is to refrain from willful misconduct or wanton negligence, to warn of known dangers not open to ordinary observation, and to refrain from intentionally exposing the uninvited licensee to danger.¹⁶

A trespasser is someone that ventures onto a person's property without the permission of the landowner. In most cases, if the owner has not given permission or is not aware of the trespasser's presence (also known as an "undiscovered trespasser"), they have no obligation or duty to warn of any dangers that may make their premises unsafe to another person. However, owners may not willfully or wantonly injure trespassers.¹⁷

A customer at an agritourism business is an invitee, and therefore the agritourism operator owes the customer the highest duty of care, which provides the greatest exposure to liability.

Effect of Proposed Changes

The bill amends s. 570.96, F.S., to provide that it is the intent of the Legislature to eliminate duplication of regulatory authority over agritourism. The bill also provides that a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law. This does not limit the powers and duties of a local government to address an emergency as provided in Chapter 252, F.S.

The bill amends s. 570.961, F.S., to redefine "agritourism activity" to mean any agriculture-related activity consistent with a bona fide farm, ranch, or working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. The bill states an agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public.

The bill changes the term "agritourism professional" to "agritourism operator." The bill also creates the term "inherent risks of agritourism activity," which is defined to mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism operator or failing to exercise reasonable caution while engaging in the agritourism activity.

For ease of reading, an "agritourism operator" is used in this analysis to refer to an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs.

The bill creates s. 570.963, F.S., to provide that an agritourism operator or owner of land on which agritourism occurs is not liable for injury, death, damage, or loss to a participant resulting from the inherent risks of agritourism activities if a specific notice of risk described below is posted as required. A participant, or a participant's representative, may not maintain an action against or recover from an agritourism professional for the injury, death, damage, or loss to an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities. In an action for damages against an agritourism professional, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

¹⁵ *Wood* at 695.

¹⁶ *Porto v. Carlyle Plaza, Inc.* 971 So.2d 940, 941 (Fla. 3rd DCA 2007).

¹⁷ Section 768.075, F.S.

The preceding provisions do not prevent or limit the liability of an agritourism operator if he or she:

- Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
- Has actual knowledge, or reasonably should have known, of a dangerous condition on the land or with the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and fails to make that danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
- Intentionally injures the participant.

The limitation of legal liability afforded in the bill to an agritourism operator is in addition to any limitations of legal liability otherwise provided by law.

The bill also creates s. 570.964, F.S., to provide that each agritourism operator must post and maintain signs that contain the notice of inherent risk described below. A sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The notice of inherent risk must consist of a sign in black letters, with each letter a minimum of 1-inch in height, with sufficient color contrast to be clearly visible.

Each written contract entered into by an agritourism operator for providing professional services, instruction, or the rental of equipment to a participant, regardless of whether the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the notice of inherent risk as specified above. The sign and contract required above must contain the following notice of inherent risk:

WARNING

Under Florida law, an agritourism operator is not liable for injury or death of, or damage or loss to, a participant in an agritourism activity conducted at this agritourism location if such injury, death, damage, or loss results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury, death, damage, or loss. You are assuming the risk of participating in this agritourism activity.

Lastly, the bill provides that failure to comply with the above requirements prevents an agritourism operator from invoking the privileges of immunity provided above.

B. SECTION DIRECTORY:

Section 1 amends s. 570.96, F.S., relating to agritourism.

Section 2 amends s. 570.961, F.S., relating to definitions.

Section 3 creates s. 570.963, F.S., relating to liability.

Section 4 creates s. 570.964, F.S., relating to posting and notification.

Section 5 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate, See Fiscal Comments section.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill redefines "agritourism activity." If the definition is deemed by a property appraiser or a court to expand or reduce the number of properties that qualify as a greenbelt property, property tax collections could be impacted accordingly. The new definition may be read to exclude some properties that are currently classified as agritourism activities. This may reduce the number of properties that would be classified as a greenbelt property appraised at a reduced agricultural use rate rather than the property's highest and best use. If the new definition is read in a way to reduce the number of greenbelt properties, it could increase local government revenues. However, if the new definition is interpreted to not change current law, then there would be no impact on local government revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 927. The amendment provides that the limitation on liability for agritourism professionals does not apply:

- To acts or omissions that constitute negligence or willful or wanton disregard for the safety of the participant;
- When the agritourism professional has actual knowledge, or reasonably should have known, of the dangerous propensity of a particular animal used in such activity; or
- When the agritourism professional intentionally injures the participant.

This bill is drafted to the committee substitute as passed by the Agriculture and Natural Resources Subcommittee.

On April 3, 2013, the State Affairs Committee adopted one amendment to CS/HB 927. The amendment:

- Narrows the scope of activities included in the definition of “agritourism activity.”
- Provides that agritourism activity does not include the construction of new or additional structures of facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public.
- Changes the term “agritourism professional” to “agritourism operator.”