

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 Committee on Rules

BILL: CS/SB 628

INTRODUCER: Rules Committee and Senator Rouson

SUBJECT: Urban Agriculture

DATE: April 6, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	<u>Argote</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 exempts propelled equipment used on a farm or used to transport farm products for the purpose of urban agriculture from the requirement that that farm equipment be stored, maintained, or repaired within the boundaries of the owner’s farm and be located at least 50 feet away from a public road. The bill does not exempt nonresidential farm buildings, fences, or signs located on lands used for urban agriculture from the Florida Building Code or local governmental regulations.

The bill defines “urban agriculture” and provides applicability.

The bill authorizes the Department of Agriculture and Consumer Services (Department) to approve five urban agricultural pilot project programs in municipalities throughout the state. The bill sets forth requirements by which the Department may approve such projects, outlines eligibility and application requirements, and provides project length periods. The bill requires that municipalities submit a report to the Department outlining outcome and impact of their pilot projects by a specified date. The Department is then required to submit a report on the outcomes and impacts of the pilot projects to the President of the Senate and the Speaker of the House of Representatives.

The bill expressly preserves local governmental authority to regulate urban agriculture under certain circumstances.

The bill takes effect July 1, 2021.

II. Present Situation:

Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.¹ This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponics facilities (e.g., growing fish and plants together in an integrated system).² Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.³ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.⁴

The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables with each other.⁵ Profitability is not necessarily the goal of community-based urban agriculture;⁶ instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.⁷

¹ Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited April 6, 2021).

² *Id.*

³ Hodgson, K., Caton Campbell, M., & Bailkey, M., *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁴ Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), United States Department of Agriculture/Agricultural Marketing Service and Cornell University Small Farms Program.

⁵ *Id.*

⁶ Hodgson, K., Caton Campbell, M., & Bailkey, M., *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁷ Vitiello, D. and Wolf-Powers, L., *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523.

“Right to Farm” Laws; Generally

In the 1970s, states began to identify the potential conflicts between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in a rash of very expensive nuisance lawsuits once the new neighbors were confronted with the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other side-effects.⁸

In an effort to protect farms and agricultural operations from the encroaching sprawl, states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, enacted in all 50 states, protect agricultural production against some nuisance lawsuits. The laws do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. These laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”⁹ The Florida Right to Farm Act was enacted in 1979.¹⁰

Nuisance

A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person’s use or enjoyment of their property. A private nuisance affects a person’s private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.¹¹

The Florida Right to Farm Act

The Florida Right to Farm Act protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.¹²

The Florida Right to Farm Act states that a farm operation cannot be classified as a public or private nuisance if the farm:

- Has been in operation for 1 year or more since its established date of operation;
- Was not a nuisance when it was established; and
- Conforms to generally accepted agricultural and management practices.¹³

However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life;
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies;

⁸ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

⁹ *Id.*

¹⁰ Chapter 79-61, ss. 1-2, Laws of Fla.

¹¹ BLACK’S LAW DICTIONARY (11th ed. 2019).

¹² Section 823.14, F.S.

¹³ Section 823.14(4)(a), F.S.

- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program; or
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.¹⁴

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change:

- In ownership;
- In the type of farm product that is produced;
- In conditions in or around the locality of the farm; or
- Made in compliance with Best Management Practices adopted by local, state, or federal agencies.¹⁵

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business.^{16,17}

The Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁸

The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every 3 years.

III. Effect of Proposed Changes:

Section 1 amends s. 604.40, F.S., to exempt propelled equipment used on a farm or used to transport farm products for the purpose of urban agriculture from the requirement that farm equipment be stored, maintained, or repaired within the boundaries of the owner’s farm and kept at least 50 feet away from any public road without limitation.

¹⁴ *Id.*

¹⁵ Section 823.14(4)(b), F.S.

¹⁶ Section 823.14(5), F.S.

¹⁷ In an effort to eliminate duplication of regulatory authority over farm operations, local governments may not adopt an ordinance or similar policy to prohibit or limit an activity of a bona fide farm operation on land that is classified as agricultural land in accordance with statute, where the activity is regulated through implemented best management practices or certain interim measures. The full text of this prohibition is contained in s. 823.14(6), F.S.

¹⁸ *See* s. 553.72(1), F.S.

Section 2 amends s. 604.50, F.S., to provide that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

Section 3 creates s. 604.73, F.S., to be known as the “Florida Urban Agriculture Act.”

The bill specifies the following legislative findings and intent related to urban agriculture:

- It is necessary to distinguish between farms on traditional rural farm land and those of urban agriculture due to the application of laws related to agricultural activities;
- It is acknowledged that the “coming to the nuisance” defense is reversed when residents bring agricultural uses to already-established, dense urbanized areas, and that municipalities should retain the right to reasonably regulate urban agriculture to protect existing urban land uses;
- It is recognized that urban agriculture has the ability to spur economic development by providing for fresh foods in city centers, community revitalization, and the adaptive reuse of vacant lands; and
- It is intended that local governments be authorized to create urban agriculture pilot projects to regulate urban agriculture under certain conditions in order to determine the effectiveness and impact of the pilot projects on farming operations in the selected dense urbanized land areas of the state.

The bill defines “urban agriculture.” The term applies to any new or existing noncommercial agricultural uses on land that is:

- Within a dense urban land area;
- Not classified as agricultural;
- Not zoned as agricultural as its principal use; and
- Designated by a municipality for inclusion in an urban agricultural pilot project that has been approved by the Department of Agriculture and Consumer Services (Department).

The term does not apply to vegetable gardens for personal consumption on residential properties.

The bill creates urban agricultural pilot projects, which grants the Department authority to approve five urban agricultural pilot project programs in municipalities throughout the state. The bill sets forth requirements by which the Department may approve such projects, outlines which municipalities are eligible for application and application requirements, and provides an initial project length period of 3 years to be renewed for additional 3-year periods if a mutual agreement is met. At the end of the first year, the Department may increase the number of pilot projects to 10.

Municipalities are required to submit a report to the Department outlining outcome and impact of their pilot projects by January 1 of each year that the pilot project is in place. The Department is then required to submit a report on the outcomes and impacts of the pilot programs to the President of the Senate and the Speaker of the House of Representatives. The Department is given rulemaking authority to administer and implement the pilot projects.

The bill provides that urban agriculture is subject to applicable municipal regulations if:

- The urban agriculture activities occur on land included by a municipality in a pilot project approved by the Department;
- The municipality duly enacts local regulations applicable to urban agriculture; and
- The regulation designates existing farm operations as legally nonconforming before the regulation's adoption.

Section 4 provides that this bill shall take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 604.40 and 604.50 of the Florida Statutes.
This bill creates section 604.73 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on April 6, 2021:

Section 604.40, F.S., is amended to include farm equipment used to transport farm products, requiring that such equipment be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation. Farm equipment under s. 604.40, F.S., used for urban agriculture would be exempt from this requirement.

The committee substitute revises the definition of the term “urban agriculture.”

The committee substitute creates the urban agricultural pilot programs, which grants the Department of Agriculture and Consumer Services (Department) the authority to approve five urban agricultural pilot project programs in municipalities throughout the state. The committee substitute sets forth requirements by which the Department may approve such programs, outlines which municipalities are eligible for application, provides application requirements if eligible, and provides program length periods. The Department is required to submit a report on the outcomes and impacts of the pilot programs to the President of the Senate and the Speaker of the House of Representatives by a specified date. The Department is given rulemaking authority to administer and implement the pilot programs.

Additionally, the committee substitute alters legislative intent to authorize local governments to create urban agriculture pilot projects and determine the effectiveness and impact of the pilot projects on farming operations in the selected dense urbanized land areas of the state.

- B. **Amendments:**

None.