

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 Finance and Tax

BILL: CS/CS/SB 1184

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senator Collins

SUBJECT: Agricultural Lands

DATE: April 12, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Shuler</u>	<u>Babin</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1184 includes a variety of provisions related to use of agricultural lands. The bill:

- Prohibits a county from levying special assessments on agricultural lands;
- Defines “agricultural employee;
- Provides that the construction or installation of housing for agricultural employees is an authorized use of land zoned for agricultural use and operated as a bona fide farm;
- Preempts a local government from adopting land use or zoning restrictions, conditions, or regulations requiring the termination of an agricultural classification for any property or the surrender of an agricultural classification if the property is used for agricultural purposes; and
- Authorizes the Florida Department of Environmental Protection to regulate and administer the use of certain toilet facilities on agricultural land.

The Revenue Estimating Conference determined that section 3 of the bill, prohibiting local governments from adopting zoning restrictions that terminate an agricultural classification, does not affect revenues. The Conference has determined that language included in section 1 will reduce local government revenues by \$23.7 million for FY 2023-24.

The bill takes effect July 1, 2023.

II. Present Situation:

Ad Valorem Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Property tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.⁴

The Florida Constitution prohibits the state from levying ad valorem taxes,⁵ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁶

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁷ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often results in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁸ land used for conservation purposes;⁹ historic properties when authorized by the county or municipality;¹⁰ and certain working waterfront property.¹¹

Agricultural Lands

Agricultural land is one example of property that is assessed based on its current use rather than its highest and best use.¹² A property appraiser is required to annually classify all land as either

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See, e.g., Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *S. Bell Tel. & Tel. Co. v. Dade Cnty.*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ Sections 197.162 and 197.322, F.S.; *see also* FLA. DEP’T OF REVENUE, *Florida Property Tax Calendar* (Dec. 2016), <https://floridarevenue.com/property/Documents/taxcalendar.pdf>.

⁵ FLA. CONST. art. VII, s. 1(a).

⁶ *See* FLA. CONST. art. VII, s. 4.

⁷ Section 193.011(2), F.S.

⁸ FLA. CONST. art. VII, s. 4(a).

⁹ FLA. CONST. art. VII, s. 4(b).

¹⁰ FLA. CONST. art. VII, s. 4(e).

¹¹ FLA. CONST. art. VII, s. 4(j).

¹² FLA. CONST. art. VII, s. 4(a).

agricultural or nonagricultural.¹³ Agricultural lands are those used primarily for bona fide agricultural purposes such as horticulture, viticulture, forestry, and farming.¹⁴

Only the area of the land used for agricultural purposes benefits from the agricultural classification.¹⁵ Maintaining a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification.¹⁶ When agricultural property contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately.¹⁷ There are certain protections of agricultural classifications when land is temporarily not being used for agriculture due to a natural disaster or in compliance with certain state agriculture programs.¹⁸

Agricultural lands are taxed at a value based on their agricultural use, which requires a property appraiser to use a different analysis to value the land than that used to determine the just value of the land.¹⁹ Additionally, certain structures that are attached physically to the land are considered to be a part of the average yields per acre and have no separately assessable contributory (taxable) value.²⁰ Lands classified as agricultural also enjoy certain benefits and protections, such as a preemption on local government restrictions of farming on those lands²¹ and limits on nuisance complaints related to farming activities.²²

Fire Protection Assessments

Counties are specifically prohibited from levying a special assessment for the provision of fire protection services on lands classified as agricultural lands, unless the land contains either a residential building, or a nonresidential farm building, other than an agricultural pole barn,²³ with a just value in excess of \$10,000.²⁴ Such a special assessment must be based solely on the special benefit accruing to the portion of the agricultural land containing the building.²⁵

Comprehensive Plans and Land Use Regulation

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development. A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.

¹³ Section 193.461(1), F.S.

¹⁴ Section 193.461, F.S.

¹⁵ Section 193.461(3)(b), F.S.

¹⁶ Section 193.461(3)(c), F.S.

¹⁷ Section 193.461(3)(d), F.S.

¹⁸ Section 193.461(7), F.S.

¹⁹ Compare s. 193.461(6), F.S. with s. 193.011, F.S.

²⁰ Section 193.461(6)(c), F.S. This treatment of these structures applies when using the income approach in determining value.

²¹ Section 163.3162, F.S.

²² See the Florida Right to Farm Act, section 823.14, F.S.

²³ A nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Section 125.01(1)(r), F.S.

²⁴ *Id.*

²⁵ *Id.*

- The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.²⁶
- The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.²⁷

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, or sign regulations or any other regulations controlling the development of land.²⁸

Zoning

Zoning maps and zoning districts are adopted by a local government for developments within each land use category or sub-category. While land uses are general in nature, one or more zoning districts may apply within each land use designation.²⁹ Common regulations on buildings within the zoning map districts include density,³⁰ height and bulk of buildings, setbacks, and parking requirements.³¹ Zoning regulations also include acceptable uses of property for other categories of land, such as agricultural or industrial.

If a landowner believes that a proposed development may have merit but it does not meet the requirements of a zoning map in a jurisdiction, the landowner can seek a rezoning through a rezoning application which is reviewed by the local government and voted on by the governing body.³² If a property has unique circumstances or small nonconformities but otherwise meets zoning regulations, local governments may ease restrictions on certain regulations such as building size or setback through an application for a variance.³³ However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

²⁶ Section 163.3177(6)(a), F.S.

²⁷ Section 163.3177(6)(f), F.S.

²⁸ See ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.

²⁹ INDIAN RIVER CNTY., *General Zoning Questions*,

<https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1> (last visited Mar 31, 2023).

³⁰ "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. Section 163.3164(12), F.S.

³¹ INDIAN RIVER CNTY., *supra* note 29.

³² See, e.g., CITY OF TALLAHASSEE, *Application For Rezoning Review*, available at:

<https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Mar. 31, 2023).

³³ See, e.g., CITY OF TALLAHASSEE, *Variance and Appeals*, available at:

https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf (last visited Mar. 31, 2023) and SEMINOLE CNTY., *Variance Process & Requirements*, <https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.stml> (last visited Mar. 31, 2023).

Migrant and Seasonal Farmworkers

Migrant farmworkers are defined as people who are or have been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who have changed residence for purposes of employment in agriculture within the last 12 months.³⁴ Outreach, employment, and other services targeted to migrant farmworkers are regulated by federal law and administered by various state and local agencies, including the Department of Economic Opportunity's Migrant and Seasonal Farmworker Services program.³⁵

Migrant farmworker housing is regulated by the Florida Department of Health in coordination with local health departments and federal law.³⁶ Migrant farmworker housing may include residential property, including mobile homes or a migrant labor camp consisting of dormitories constructed and operated as living quarters for migrant farmworkers.³⁷ Establishment of such housing requires advance notice, inspections, and permitting based on standards of construction, sanitation, equipment, and operation, as well as compliance with inspections during use.³⁸

Employment Verification

Under the Immigration Reform and Control Act of 1986 (IRCA),³⁹ it is illegal for any United States employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the IRCA.⁴⁰

Under Florida law, public employers and their contractors, and subcontractors thereof, are required to register and use E-Verify to verify the work authorization status of all newly hired employees.⁴¹ A private employer that transacts business in Florida, has a license issued by an agency, and employs workers in Florida is required to use the I-9 Form or E-Verify or a substantially equivalent system to verify that new hires or retained contract employees are authorized to work in the United States.⁴²

III. Effect of Proposed Changes:

Section 1 amends s. 125.01, F.S., regarding special assessments. Current law provides that a county may not levy special assessments for the provision of fire protection services on agricultural lands unless the land contains a residential dwelling of any value, or a nonresidential

³⁴ Section 381.008(4), F.S.

³⁵ FLA. DEP'T OF ECON. OPPORTUNITY, *Migrant and Seasonal Farmworker Services*, <https://floridajobs.org/office-directory/division-of-workforce-services/workforce-programs/migrant-and-seasonal-farmworker-services> (last visited Mar. 31, 2023).

³⁶ Sections 381.008-381.00897, F.S.

³⁷ Section 381.008(5) and (8), F.S.

³⁸ Section 381.0083, F.S.

³⁹ Pub. L. No. 99-603, 100 Stat. 3359.

⁴⁰ 8 U.S.C. s. 1324a.

⁴¹ Section 448.095(2), F.S.

⁴² Section 448.095(3), F.S.

farm building which exceeds a just value of \$10,000. The bill prohibits counties from levying any special assessments on lands classified as agricultural lands.

Section 2 amends s. 163.3162, F.S., to define “agricultural employee” as a person who:

- Produces a farm product;
- Is seasonally or annually employed in agricultural production;
- Is lawfully present in the United States;
- Is allowed, and remains allowed, to work; and
- Has been verified according to the state’s employment eligibility verification requirements.

The bill provides that the construction or installation of housing for agricultural employees is an authorized use on land zoned for agricultural use and operated as a bona fide farm. Housing authorized under this section:

- May not exceed 7,500 square feet per parcel of land;
- Must meet all local and state building standards for securing a certificate of occupancy; and
- Does not require approval by ordinance or resolution of the jurisdiction in which the land is located.

The bill further provides that if agricultural operations are discontinued on the property for at least 3 years and the land is no longer classified as agricultural, housing established under this section is no longer eligible for residential use without further approval under the local jurisdiction’s zoning and land use regulations.

Section 3 amends s. 193.461, F.S., to preempt a local government from adopting land use or zoning restrictions, conditions, or regulations requiring the termination of an agricultural classification for any property or the surrender of an agricultural classification for any property by the property owner, if the property is used for bona fide agricultural purposes. Such restrictions, conditions, or regulations adopted before July 1, 2023, are invalid and unenforceable.

Section 4 amends s. 381.0065, F.S., to provide that the Florida Department of Environmental Protection may review applications, perform site inspections, and issue permits for the use of holding tanks, privies, portable toilet services, or any other toilet facility intended for use on a permanent or nonpermanent basis placed on lands classified as agricultural. Current law is silent on the use of such facilities on agricultural lands, referring only specifically to use on construction sites while workers are present.

Section 5 provides that the bill shall take effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote 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

revenue in the aggregate, as such authority existed on February 1, 1989. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2022-2023 is forecast at approximately \$2.3 million.^{43,44}

The Revenue Estimating Conference adopted an impact for section 3 relating to agricultural land zoning restrictions and determined that this section does not have an impact because it reflects current law and current administration.⁴⁵ The Conference has determined that language prohibiting special assessments of agricultural lands will reduce local revenues by \$23.7 million for FY 2023-24.⁴⁶ Therefore, the mandates provisions of Art. VII, s. 18 of the Florida Constitution may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the Florida Constitution requires that legislation that increases or creates taxes or fees be passed by a 2/3 vote of each chamber in a bill with no other subject. The bill does not increase or create new taxes or fees. Thus, the constitutional requirements related to new or increased taxes or fees do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that section 3 has no impact.⁴⁷ The Conference has determined that language included in section 1 will reduce local government revenues by \$23.7 million for FY 2023-24.⁴⁸

⁴³ FLA. CONST. art. VII, s. 18(d).

⁴⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

⁴⁵ OFF. OF ECON. & DEMOGRAPHIC RSCH., *Revenue Estimating Conference Impact Results: SB 1184/HB 1343*, 282-83, (Mar. 24, 2023), available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/pdf/page282-283.pdf> [hereinafter EDR 3/24].

⁴⁶ OFF. OF ECON. & DEMOGRAPHIC RSCH., *Revenue Estimating Conference Impact Results: CS/HB 1343*, 377-78, (Apr. 7, 2023), available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/pdf/impact0407.pdf> [hereinafter EDR 4/7].

⁴⁷ EDR 3/24 at 283.

⁴⁸ EDR 4/7 at 378.

B. Private Sector Impact:

Businesses employing and housing migrant farmworkers will benefit from a variety of provisions of the bill creating certain property rights and reducing special assessments.

C. Government Sector Impact:

Local governments will be negatively impacted to the extent that prohibiting special assessments reduces revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01, 163.3162, 193.461, and 381.0065.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Finance and Tax on April 12, 2023:

The CS:

- Revises the prohibition on special assessments to apply to all special assessments on agricultural lands;
- Defines “agricultural employee” and incorporates the term in language authorizing housing on agricultural lands for such employees; and
- Removes a section from the bill that would have created a sales tax credit for the rental or purchase of migrant farmworker housing.

CS by Community Affairs on March 22, 2023:

The CS:

- Increases the maximum size of permitted housing for migrant farmworkers on agricultural land from 5,000 to 7,500 square feet per parcel;
- Provides that such housing is not eligible for residential uses without further jurisdiction approval if the property ceases farming operations and loses agricultural classification; and
- Updates references throughout to “migrant farmworkers” to read “legal migrant farmworkers.”

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
