

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/SB 1184

INTRODUCER: Community Affairs Committee and Senator Collins

SUBJECT: Agricultural Lands

DATE: April 11, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

- Increases the minimum value of a nonresidential farm building which would permit a county to levy fire protection service assessments on agricultural lands from \$10,000 to \$350,000;
- Provides that the construction or installation of housing for legal migrant farmworkers is an authorized use of farm land zoned for agricultural use;
- 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;
- Provides a credit against sales tax paid on the rental or purchase of housing for legal migrant farmworkers; 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. Staff estimates that the remaining portions of the bill will reduce local government revenues and general revenue by a significant amount.

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).

Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,³⁴ admissions,³⁵ transient rentals,³⁶ and a limited number of services.³⁷ Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain sales. Sales tax is added to the sales price of the taxable good or service and collected from the purchaser at the time of sale.³⁸

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.³⁹ A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.] and communications services as defined in chapter 202."⁴⁰ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax may be levied in a range of 0.5 to 2.5 percent.⁴¹

Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 270 exemptions, exclusions, deduction, and credits from sales and use tax.⁴²

Enterprise Zone Jobs Credit Against Sales Tax

The legislature once provided a credit known as the Enterprise Zone Jobs Credit against certain sales taxes for eligible businesses.⁴³ To be eligible for this credit, a business must have been located in an enterprise zone and demonstrated to the Department of Revenue that, upon application, the total number of full-time jobs created by the business is greater than the total was 12 months prior to that date.⁴⁴

The enterprise zone system and related tax credits, including s. 212.096, F.S., were repealed December 31, 2015.⁴⁵

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

³⁴ Section 212.05(1)(a)1.a., F.S.

³⁵ Section 212.04(1)(b), F.S.

³⁶ Section 212.03(1)(a), F.S.

³⁷ See ch. 212, F.S.

³⁸ Section 212.07(2), F.S.

³⁹ Section 212.055, F.S.

⁴⁰ Section 212.054(2)(a), F.S.

⁴¹ FLA. DEP'T OF REVENUE, *Discretionary Sales Surtax* (Sept. 2022), available at: https://floridarevenue.com/Forms_library/current/gt800019.pdf.

⁴² FLA. REVENUE ESTIMATING CONF., *2022 Florida Tax Handbook* (Nov. 4, 2022), at 166-171, available at: <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2022.pdf>.

⁴³ Section 212.096, F.S.

⁴⁴ *Id.*

⁴⁵ Sections 212.096(12) and 290.016, F.S.

who have changed residence for purposes of employment in agriculture within the last 12 months.⁴⁶ 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.⁴⁷

Migrant farmworker housing is regulated by the Florida Department of Health in coordination with local health departments and federal law.⁴⁸ 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.⁴⁹ 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.⁵⁰

III. Effect of Proposed Changes:

Section 1 amends s. 125.01, F.S., regarding fire protection service 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 farm building which exceeds a just value of \$10,000; the bill increases this value to \$350,000.

Section 2 amends s. 163.3162, F.S., to provide that the construction or installation of housing for legal migrant farmworkers is an authorized use on land zoned for agricultural use and operated as a bona fide farm. Housing authorized under this section:

- Must 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.

⁴⁶ Section 381.008(4), F.S.

⁴⁷ 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).

⁴⁸ Sections 381.008-381.00897, F.S.

⁴⁹ Section 381.008(5) and (8), F.S.

⁵⁰ Section 381.0083, F.S.

Section 4 amends s. 212.096, F.S., to provide a credit against sales and use taxes for 100 percent of the sales and use tax due on:

- Rental of housing, including a building, manufactured home, mobile home, dormitory, barracks, motel, or hotel, for housing two or more legal migrant farmworkers; or
- Purchase of a mobile home as defined in s. 320.01(2)(a), F.S.,⁵¹ or manufactured home as defined in s. 320.01(2)(b), F.S.,⁵² for housing two or more legal migrant farmworkers.

The section is housed within the enterprise zone jobs credit against sales tax, which requires an affirmative showing by an eligible business that the business is located in an enterprise zone and the number of full time jobs generated by the business is greater in the year the credit is claimed than in the previous year.

In order to claim this credit, an employer must file under oath with the governing body where the property is located a statement that includes the name and address of the eligible business and, for each legal migrant farmworker for whom this credit is claimed, the farmworker's name, place of permanent residence, hourly wages paid to the worker, and documentation that the farmworker is legally eligible for participation in the workforce.

Within 10 working days after receipt of such an application, the governing body shall review the application for completeness and certify all complete applications as eligible to receive the credit. Applications for a credit must be submitted to the DOR within 6 months after the employee is hired.

Section 5 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 6 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. The bill may

⁵¹ "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Section 320.01(2)(a), F.S.

⁵² "Manufactured home" means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act. Section 320.01(2)(b), F.S.

reduce local government revenue by creating a sales tax credit for certain taxes paid, and prohibiting special assessments for fire protection services in certain circumstances.

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.^{53,54} The Revenue Estimating Conference has only reviewed and adopted an impact for one section of this bill—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.⁵⁵ Any reduction of local government revenue created by other provisions of the bill is indeterminate at this time.

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 but has not yet reviewed the other sections of the bill.⁵⁶ Staff estimates that the remaining portions of the bill will reduce local government revenues and general revenue by a significant amount.

⁵³ FLA. CONST. art. VII, s. 18(d).

⁵⁴ 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>.

⁵⁵ 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.

⁵⁶ *Id.*

B. Private Sector Impact:

Businesses employing and housing migrant farmworkers will benefit from a variety of provisions of the bill implementing sales tax credits, creating certain property rights, and reducing special assessments for fire protection services.

C. Government Sector Impact:

State and local governments will be negatively impacted by the creation of a sales tax credit. Additionally, local governments will be impacted to the extent that prohibiting the special assessments for fire protection services reduces revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 4 of the bill, authorizing a tax credit against certain sales tax paid related to the housing of migrant farmworkers, is tied to the enterprise zone job creation tax credit, a now-repealed statute which required a showing that permanent, full-time jobs were created by a business. Additionally, the provision creates a tax credit against sales taxes in the amount of sales taxes paid, which may be administratively complicated.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01, 163.3162, 193.461, 212.096, 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 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.