

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 Community Affairs

BILL: SB 1268

INTRODUCER: Senator Rouson

SUBJECT: Urban Agriculture Pilot Projects

DATE: March 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1268 provides that urban agriculture pilot projects may include commercial agricultural uses, in addition to noncommercial uses. Urban agriculture pilot projects, first instituted in 2021, are grant-funded farming projects in dense urban areas designed to increase access to fresh produce in city centers.

The bill takes effect July 1, 2023.

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.

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 March 10, 2023).

² *Id.*

Urban Agriculture Pilot Projects

In 2021 the Legislature authorized the Florida Department of Agriculture and Consumer Services (department) to approve five urban agricultural pilot project projects in municipalities throughout the state.³ For the purpose of these projects, “urban agriculture” is defined as new or existing noncommercial agricultural uses, not including vegetable gardens for personal consumption, on nonagricultural land in a dense urban land area.⁴

Municipalities with a population of more than 250,000 apply for project grants by submitting a proposal for the project including its location, what products will be cultivated, community involvement, and anticipated outcomes.⁵ Projects are approved for an initial 3-year period and may be renewed thereafter, and municipalities must submit a report to the department outlining outcome and impact of their pilot projects by a specified date.⁶ 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.⁷ Municipalities are authorized to regulate land use on urban agriculture pilot programs beyond the Right to Farm act.⁸

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.⁹ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.¹⁰

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.¹¹ Profitability is not necessarily the goal of community-based urban agriculture;¹² instead, these efforts seek dedicated outside funding to realize urban agricultures promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.¹³

³ Chapter 2021-115, L.O.F.

⁴ Section 604.73(3), F.S.

⁵ Section 604.73(4), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 604.73(5), F.S.

⁹ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

¹⁰ 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.

¹¹ *Id.*

¹² Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

¹³ 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.¹⁴

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.”¹⁵ The Florida Right to Farm Act was enacted in 1979.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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;

¹⁴ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

¹⁵ *Id.*

¹⁶ Chapter 79-61, ss. 1-2, Laws of Fla.

¹⁷ Black’s Law Dictionary (11th ed. 2019).

¹⁸ Section 823.14, F.S.

¹⁹ 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.²⁰

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.²¹

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.^{22,23}

III. Effect of Proposed Changes:

The bill amends s. 604.73(3)(b), F.S., to provide that eligible urban agriculture pilot projects, developments funded by state grants designed to bring fresh agricultural goods to city centers, may include new commercial uses in addition to new or existing noncommercial uses. This expands the scope of what types of projects can be approved, but does not affect the total funding or processes related to these projects.

The bill also reenacts s. 604.40(2), F.S., and s. 604.50(2)(e), F.S., to update references to urban agriculture used in regulations regarding storage of farm equipment and the construction of farm buildings and fences.

The bill will take effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ *Id.*

²¹ Section 823.14(4)(b), F.S.

²² Section 823.14(5), F.S.

²³ 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.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 reenacts sections 604.40 and 604.50 of the Florida Statutes.

This bill substantially amends section 604.73 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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