HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1361 Organic Material Products
SPONSOR(S): Agriculture, Conservation & Resiliency Subcommittee, Truenow
TIED BILLS: **IDEN./SIM. BILLS:** SB 1472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	17 Y, 0 N, As CS	Mamontoff	Moore
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

In response to the loss of farmland due to encroaching suburban sprawl, nuisance claims, and modern zoning, the Legislature enacted Florida's Right to Farm Act (Act) in 1979. The purpose of the Act was to provide more protection for commercial agriculture and farming operations from nuisance claims, and slow the rapid conversion of farmland to more compatible uses.

The first part of the Act regulates how and when a person can bring a private nuisance claim against a neighboring farm. A farm facing a nuisance lawsuit is able to use the right to farm defense. The second part of the Act provides farms with protection from local regulations. The Act limits local governments' ability to regulate agriculture by prohibiting them from adopting any ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an activity of bona fide farm operations on land classified as agricultural.

The bill adds activities related to organic material collection, storage, processing, and distribution to the types of farm operations that are protected under the Act.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The most common objection that new property owners have against agricultural operations is that they constitute a nuisance. Pursuant to general nuisance common law, a landowner cannot use his or her land in a manner that unreasonably interferes with another landowner's use and enjoyment of his or her land.[1] As such, the benefits and harms created by farms are considered in balancing the relative rights of the farmer versus that of his neighbor.

Historically, a farmer's only protection from nuisance claims asserted by his or her neighbor was the position that the farm was in operation long before the neighbor moved to the area.[2] While this argument provided some protection, it was not consistently applied where the character of agricultural communities had changed due to urban and suburban encroachment. Therefore, farmers could not rely on this doctrine to protect them against lawsuits.[3]

The creation of Right to Farm Statutes was seen as the solution to this problem. Today, all fifty states have enacted Right to Farm laws that seek to protect qualifying farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who later use nuisance actions to attempt to stop those ongoing operations.[4] The core component of most Right to Farm statutes is the nuisance shield afforded to farmers, or protection against nuisance litigation and protection against the application of ordinances that would classify farm activities as a nuisance.[5]

The Florida Right to Farm Act

In response to the loss of farmland due to encroaching suburban sprawl, nuisance claims, and modern zoning, the Legislature enacted Florida's Right to Farm Act (Act) in 1979. The purpose of the Act was to provide more protection for commercial agriculture and farming operations from nuisance claims, and slow the rapid conversion of farmland to more compatible uses.

Protection from Nuisance Lawsuits

The first part of the Act regulates how and when a person can bring a private nuisance claim against a neighboring farm. A farm that is facing a nuisance lawsuit can use the right to farm defense.[6] This defense is available to "farm operations,"[7] meaning that the right to farm defense is available to more farms than just the "bona fide agricultural operations"[8] defined in Florida's Greenbelt Law.

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[1] Ross H. Pifer, Creighton Law Review, Right to Farm Statutes and the Changing State of Modern Agriculture, 46 CRLR 707 (2013).

[2] *Id*.

[3] *Id*.

[4] National Agricultural Law Center, *States' Right-To-Farm Statutes*, https://nationalaglawcenter.org/state-compilations/right-to-farm/ (last visited March 20, 2023).

[5] 46 CRLR 707 (2013).

[6] University of Florida IFAS extension, *The Florida Right to Farm Act*, https://edis.ifas.ufl.edu/publication/FY1496 (last visited March 20, 2023).

[7] "Farm operations" means all conditions or activities by the owner, lessee, agent, independent contractor, or supplier which occur on a farm in connection with the production of farm, honeybee, or apiculture products or in connection with complementary agritourism activities. These conditions and activities include, but are not limited to, the marketing of farm products at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, fumes, and particle emissions; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; agritourism activities; and the employment and use of labor. Section 823.14(3)(d), F.S.

[8] "Bona fide farm operation" means a farm operation that is engaged in good faith commercial agricultural use of land on land that has been classified as agricultural. Section 193.461(3)(b), F.S.

Although the definition of a "farm operations" is broad, the Act includes limitations. For a farm operation to be eligible to use the defense, it must:

- Have been in operation for more than one year at the time of the lawsuit;
- Not have been a nuisance when the farm began its operation; and
- Comply with "generally accepted agriculture and management practices."[9]

In 2021, SB 88 was enacted, which amended the Act to:

- Expand the definition of "farm operation";
- Define nuisance[10] as to farm operations;
- Require plaintiffs to prove by clear and convincing evidence that their claim arises from conduct that did not comply with state or federal environmental laws, regulations, or best management practices in a civil nuisance action against the farm;
- Prohibit nuisance actions from being filed unless the real property affected is located within one-half mile of the alleged nuisance;
- Clarify and limit compensatory and punitive damages in certain claims; and
- Provide an award of attorney fees, costs, and expenses against a plaintiff in certain situations.[11]

Organics Recycling on Florida's Farms

Existing regulatory exemptions for agricultural composting as part of normal farming operations play a role in establishing markets for processed yard trash. Farms are taking large amounts of processed yard trash from off-site and utilizing it for land application, soil amendment, and as bedding material for feed lots. In addition, several small compost producers utilized the agricultural exemption to avoid needing a full permit.[12]

Florida's on-farm exemption limits its operations to those that are farm-based and not driven solely by commercial composting interests. For example, a farm may only bring in yard trash from off-site if the compost is to be used on-site as parts of agronomic, horticultural, or silvicultural operations; or the amount of off-site material is limited to that necessary to optimize the composting of yard trash generated on the farm.[13]

Effect of the Bill

The bill adds activities related to organic material collection, storage, processing, and distribution to the types of farm operations that are protected under the Act. The bill amends definitions in the Act to specify:

- "Farm" includes the land, buildings, support facilities, machinery, and other appurtenances used in the production of organic material.
- "Farm operation" includes all conditions or activities by the owner, lessee, agent, independent contractor, or supplier which occur on a farm in connection with the collection, storage, processing, and distribution of organic material products.
- "Farm product" includes organic material.

The bill also defines the term "organic material" to mean vegetative matter resulting from landscaping maintenance or land clearing operations, including materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils, and clean wood.

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[9] Section 823.14(4)(a)-(d), F.S.

[10] "Nuisance" means any interference with reasonable use and enjoyment of land, including, but not limited to, noise, smoke, odors, dust, fumes, particle emissions, or vibration. The term also includes all claims that meet the requirements of this definition, regardless of whether the plaintiff designates those claims as brought in nuisance, negligence, trespass, personal injury, strict liability, or other tort. Section 823.14(3)(f), F.S.

[11] Governor Signs Right to Farm Bill Following Overwhelming Legislative Support, https://www.flgov.com/2021/04/29/governor-signs-right-to-farm-bill-following-overwhelming-legislative-support/ (last visited March 20, 2023).

[12] FORCE, *2006 Florida Composting Regulatory Report*, https://floridaforce.org/wp-content/uploads/2016/12/Year5_Regulatory-Report_Final.pdf (last visited March 22, 2023).

[13] *Id*.

B. SECTION DIRECTORY:

Section 1. Amends s. 823.14, F.S, relating to the Florida Right to Farm Act.

Section 2. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the provision that prohibited a local government from adopting any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit the collection, storage, processing, or distribution of organic material products; and that classified the collection, storage, processing, or distribution of organic material products as a bona fide farm operation.

This analysis is drafted to the committee substitute as approved by the Agriculture, Conservation & Resiliency Subcommittee.