

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1082

INTRODUCER: Senator Collins

SUBJECT: Housing for Agricultural Workers

DATE: February 7, 2024

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 1082 preempts a local government from inhibiting the construction or installation of housing for certain agricultural workers on land classified as agricultural if the housing meets certain criteria related to location and construction. The bill also provides for circumstances requiring the removal or disuse of such housing, and recordkeeping requirements for property owners related to such housing sites.

The bill takes effect July 1, 2024.

**II. Present Situation:**

**Comprehensive Plans and Land Use Regulation**

The Community Planning Act<sup>1</sup> requires every city and county to create and implement a comprehensive plan to guide future development. A local government'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.

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.<sup>2</sup>

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

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<sup>1</sup> Part II, Ch. 163, F.S.

<sup>2</sup> Section 163.3177(6)(a), F.S.

jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.<sup>3</sup>

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.<sup>4</sup>

### ***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.<sup>5</sup> Common regulations on buildings within the zoning map districts include density,<sup>6</sup> height and bulk of buildings, setbacks, and parking requirements.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

### ***Agricultural Lands***

Agricultural land is one example of property that is assessed based on its current use rather than its highest and best use.<sup>10</sup> A property appraiser is required to annually classify all land as either agricultural or nonagricultural.<sup>11</sup> Agricultural lands are those used primarily for bona fide agricultural purposes such as horticulture, viticulture, forestry, and farming.<sup>12</sup>

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<sup>3</sup> Section 163.3177(6)(f), F.S.

<sup>4</sup> 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.

<sup>5</sup> INDIAN RIVER CNTY., *General Zoning Questions*, [https://indianriver.gov/services/community\\_development/faq.php#faq-questions-33](https://indianriver.gov/services/community_development/faq.php#faq-questions-33) (last visited Jan. 22, 2024).

<sup>6</sup> "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.

<sup>7</sup> INDIAN RIVER CNTY., *supra* note 5.

<sup>8</sup> 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 Jan. 22, 2024).

<sup>9</sup> See, e.g., CITY OF TALLAHASSEE, *Variance and Appeals*, available at: [https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa\\_variance.pdf](https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf) (last visited Jan. 22, 2024) 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 Jan. 22, 2024).

<sup>10</sup> FLA. CONST. art. VII, s. 4(a).

<sup>11</sup> Section 193.461(1), F.S.

<sup>12</sup> Section 193.461, F.S.

## **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.<sup>13</sup> 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.<sup>14</sup>

Migrant farmworker housing is regulated by the Florida Department of Health in coordination with local health departments and federal law.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

## **Employment Verification**

Under the Immigration Reform and Control Act of 1986 (IRCA),<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup>

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<sup>13</sup> Section 381.008(4), F.S.

<sup>14</sup> 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 Jan. 22, 2024).

<sup>15</sup> Sections 381.008-381.00897, F.S.

<sup>16</sup> Section 381.008(5) and (8), F.S.

<sup>17</sup> Section 381.0083, F.S.

<sup>18</sup> Pub. L. No. 99-603, 100 Stat. 3359.

<sup>19</sup> 8 U.S.C. s. 1324a.

<sup>20</sup> Section 448.095(2), F.S.

<sup>21</sup> Section 448.095(3), F.S.

### ***H-2A Visa Program***<sup>22</sup>

The H-2A Temporary Agricultural Workers program is a federal program which allows U.S. employers meeting specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. The program includes work, housing, visa, and recordkeeping requirements, and is a joint program of the Federal Departments of Labor, State, and Homeland Security. Prospective nonimmigrant agricultural workers must receive a temporary labor certification from the U.S. Department of Labor.

### **Florida Keys Area of Critical State Concern**

The Florida Keys Area Protection Act<sup>23</sup> provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with “goals, objectives and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.”<sup>24</sup> Monroe County, applicable municipalities, and the DEO have agreed to use a multi-phase evacuation model and limit residential building permits going forward in order to comply with these standards.<sup>25</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 163.3162, F.S., to define “agricultural worker” as a person who:

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

This term includes a migrant farmworker as defined in s. 381.008, F.S., and a worker with an H-2A visa.

The bill defines “housing site” as the totality of development supporting authorized housing, including buildings, mobile homes, barracks, dormitories, parking areas, common areas, storage structures, and related structures.

The bill provides that a governmental entity may not adopt or enforce any legislation which inhibits the construction or installation of housing for agricultural employees on land zoned for agricultural use and operated as a bona fide farm, except as provided by law. The bill provides that local governments may require that a housing site authorized under this section:

- Must meet all local and state building standards, including migrant farmworker housing standards regulated by the Department of Health and federal standards for H-2A visa housing;

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<sup>22</sup> See generally, Department of Homeland Security Office of U.S. Citizenship and Immigration Services, *H-2A Temporary Agricultural Workers*, available at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers> (last visited Jan. 22, 2024).

<sup>23</sup> Section 380.0552, F.S.

<sup>24</sup> *Id.* at (9)(e)2.

<sup>25</sup> See *Mattino v. City of Marathon*, 345 So.3d 939 (Fla. 3d DCA 2022), for detailed background on this section.

- Must be maintained in a neat, orderly, and safe manner;
- Must have structures placed a minimum of 10 feet apart;
- May not exceed square footage of 1.5 percent of the property's area or 35,000 square feet, whichever is less;
- Must provide 50 foot setbacks on all sides;
- May not be located less than 250 feet from a property line adjacent to property zoned for residential use;
- If within 500 feet of a property line adjacent to property zoned for residential use, must contain screening consisting of tree, wall, berm or fence coverage at least six feet in height; and
- Must cover access drives with dust-free material such as packed shell or gravel.

The bill provides that a local ordinance adopted pursuant to this section must comply with state and federal regulations for migrant farmworker housing, and that a local government may validly adopt less restrictive land use regulations.

The bill further provides that, beginning July 1, 2024, a property owner must maintain records of all permits for such housing for three years, and make the records available for inspection within 14 days after receipt of a request by a governmental entity.

The bill further provides that if agricultural operations are discontinued on the property for at least 365 days, structures used as living quarters must be removed within 180 days after notice from the local government unless the property owner demonstrates that its intended use will resume within 90 days. If the property ceases to be 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. Additionally, if Department of Health permits for agricultural housing uses are revoked, structures used as living quarters must be removed within 180 days of notice from the local government unless the permit is reinstated.

The bill provides that, notwithstanding the provisions herein, the construction or installation of housing for seasonal agricultural employees in the Florida Keys and City of Key West Areas of Critical State Concern is subject to the permit allocation system.

The bill finally provides that a housing site constructed and in use before July 1, 2024, may continue to be used, and the property owner may not be required to make changes to meet the requirements of this section, unless the housing site will be enlarged, remodeled, renovated, or rehabilitated.

The bill takes effect July 1, 2024.

#### **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 identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Businesses employing and housing migrant farmworkers will benefit from the creation of certain property rights.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.3162 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.

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

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