

ENROLLED

CS/CS/HB 421, Engrossed 1

2011 Legislature

1 A bill to be entitled
 2 An act relating to agricultural-related exemptions to
 3 water management requirements; amending s. 373.406, F.S.;
 4 revising an exemption for agricultural-related activities
 5 to include certain impacts to surface waters and wetlands;
 6 clarifying the purposes of such activities; limiting
 7 applicability of the exemption; providing for retroactive
 8 application of the exemption; amending s. 373.407, F.S.;
 9 providing exclusive authority to the Department of
 10 Agriculture and Consumer Services to determine whether
 11 certain activities qualify for an agricultural-related
 12 exemption under specified conditions; requiring a
 13 specified memorandum of agreement between the department
 14 and each water management district; authorizing the
 15 department to adopt rules; amending s. 403.927, F.S.;
 16 providing an exemption from mitigation requirements for
 17 converted agricultural lands under certain conditions;
 18 revising the definition of the term "agricultural
 19 activities" to include cultivating, fallowing, leveling,
 20 and implementation of specified practices and standards
 21 and to provide for certain impacts to surface waters and
 22 wetlands; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (2) of section 373.406, Florida
 27 Statutes, is amended to read:

28 373.406 Exemptions.—The following exemptions shall apply:

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29 (2) Notwithstanding s. 403.927, nothing herein, or in any
 30 rule, regulation, or order adopted pursuant hereto, shall be
 31 construed to affect the right of any person engaged in the
 32 occupation of agriculture, silviculture, floriculture, or
 33 horticulture to alter the topography of any tract of land,
 34 including, but not limited to, activities that may impede or
 35 divert the flow of surface waters or adversely impact wetlands,
 36 for purposes consistent with the normal and customary practice
 37 of such occupation in the area. However, such alteration or
 38 activity may not be for the sole or predominant purpose of
 39 impeding impounding or diverting the flow of obstructing surface
 40 waters or adversely impacting wetlands. This exemption applies
 41 to lands classified as agricultural pursuant to s. 193.461 and
 42 to activities requiring an environmental resource permit
 43 pursuant to this part. This exemption does not apply to any
 44 activities previously authorized by an environmental resource
 45 permit or a management and storage of surface water permit
 46 issued pursuant to this part or a dredge and fill permit issued
 47 pursuant to chapter 403. This exemption has retroactive
 48 application to July 1, 1984.

49 Section 2. Section 373.407, Florida Statutes, is amended
 50 to read:

51 373.407 Determination of qualification ~~Memorandum of~~
 52 ~~agreement~~ for an agricultural-related exemption. In the event of
 53 a dispute as to the applicability of an exemption, ~~No later than~~
 54 ~~July 1, 2007,~~ the Department of Agriculture and Consumer
 55 Services and each water management district shall enter into a
 56 ~~memorandum of agreement under which the Department of~~

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57 ~~Agriculture and Consumer Services shall assist in a~~
 58 ~~determination by a water management district or landowner may as~~
 59 ~~to whether an existing or proposed activity qualifies for the~~
 60 ~~exemption in s. 373.406(2). The memorandum of agreement shall~~
 61 ~~provide a process by which, upon the request of a water~~
 62 ~~management district, the Department of Agriculture and Consumer~~
 63 ~~Services to make a binding determination shall conduct a~~
 64 ~~nonbinding review as to whether an existing or proposed activity~~
 65 ~~qualifies for an agricultural-related exemption under in s.~~
 66 ~~373.406(2). The Department of Agriculture and Consumer Services~~
 67 ~~and each water management district shall enter into a memorandum~~
 68 ~~of agreement or amend an existing memorandum of agreement which~~
 69 ~~sets forth shall provide processes and procedures by which the~~
 70 ~~Department of Agriculture and Consumer Services shall undertake~~
 71 ~~its this review, make a determination effectively and~~
 72 ~~efficiently, and provide notice of its determination to the~~
 73 ~~applicable water management district or landowner. The~~
 74 ~~Department of Agriculture and Consumer Services has exclusive~~
 75 ~~authority to make the determination under this section and may~~
 76 ~~adopt rules to implement this section and s. 373.406(2) issue a~~
 77 ~~recommendation.~~

78 Section 3. Subsection (3) and paragraph (a) of subsection
 79 (4) of section 403.927, Florida Statutes, are amended to read:

80 403.927 Use of water in farming and forestry activities.—

81 (3) If land served by a water management system is
 82 converted to a use other than an agricultural use, the water
 83 management system, or the portion of the system which serves
 84 that land, will be subject to the provisions of this chapter.

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85 However, mitigation under chapter 373 or this chapter to offset
86 any adverse effects caused by agricultural activities that
87 occurred before the conversion of the land is not required if
88 the activities occurred on the land in the last 4 years
89 preceding the conversion.

90 (4) As used in this section, the term:

91 (a) "Agricultural activities" includes all necessary
92 farming and forestry operations which are normal and customary
93 for the area, such as site preparation, clearing, fencing,
94 contouring to prevent soil erosion, soil preparation, plowing,
95 planting, cultivating, harvesting, fallowing, leveling,
96 construction of access roads, ~~and~~ placement of bridges and
97 culverts, and implementation of best management practices
98 adopted by the Department of Agriculture and Consumer Services
99 or practice standards adopted by the United States Department of
100 Agriculture's Natural Resources Conservation Service, provided
101 such operations are not for the sole or predominant purpose of
102 impeding ~~do not impede~~ or diverting ~~divert~~ the flow of surface
103 waters or adversely impacting wetlands.

104 Section 4. This act shall take effect July 1, 2011.