

**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 Agriculture Committee

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BILL: SB 1184

INTRODUCER: Senator Norman

SUBJECT: Agriculture

DATE: January 19, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Buford	AG	<b>Pre-meeting</b>
2.	_____	_____	TR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill includes the following provisions related to agriculture:

- Prohibits governmental entities from charging an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural under certain circumstances. The bill replaces the word “county” with “governmental entity” in the provisions described above which has the effect of expanding, from only counties to counties, municipalities, and regional governmental entities.
- Authorizes the use of citrus harvesting equipment and citrus fruit loaders to transport citrus between farms on public state highways without violating the public highway use restriction for the purpose of qualifying for the motor fuel tax refund.
- Authorizes the Department of Agriculture and Consumer Services (department) to enforce the state laws and rules relating to the use of commercial feed stocks. It requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.
- Prohibits a person to knowingly enter any nonpublic area of a farm and, without prior written consent to record sounds or images of the farm or farm operations, with certain exceptions. Violations are punishable by a term of imprisonment not exceeding one year or a fine of \$1,000. The effective date for this provision of the bill is October 1, 2012.

This bill amends sections 163.3162, 206.41, 316.515, 570.07 and 580.036 of the Florida Statutes.

This bill creates section 810.127 of the Florida Statutes.

## II. Present Situation:

### Stormwater Utility Fees

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. This may create a duplicative financial burden for the agricultural operation that is already paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

### Agricultural Lands and Practices Act

In 2003, the Legislature passed the Agricultural Lands and Practices Act, codified in s. 163.3162, F.S., to prohibit counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a *bona fide* farm or farm operation on agricultural land if such activity is regulated through best management practices (BMPs), interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. While the Agricultural Land and Practices Act banned the adoption of future local government restrictive measures, it did not explicitly prohibit the enforcement of existing local government measures.

In 2011, the Legislature overrode the veto of HB 7103, which passed the House and Senate during the 2010 Legislative Session. HB 7103, in part, amended s. 163.3162(3)(b), F.S., to provide that a county cannot charge an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP), or works-of-the-district permit or implements best management practices (BMPs). In addition, HB 7103 amended s. 163.3162(3)(c), F.S., to provide that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a *bona fide* farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a *bona fide* farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services,

or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands.

### **Motor Fuel Taxes**

Agricultural, aquacultural, commercial fishing, or commercial aviation permit holders who have paid the local option fuel tax, an additional tax designated as the “State Comprehensive Enhanced Transportation System Tax,” or fuel sales tax are entitled to a refund of a portion of the fuel tax levied under sections 206.41(1)(g) and 206.41(c), F.S. For the purpose of establishing what activities qualify for the tax refund, “agricultural and aquacultural purposes” means “motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction from being driven or operated upon Florida public highways does not apply to the movement of a farm vehicle or farm equipment between farms. It also does not include citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund.

### **Uniform Traffic Control Law**

Chapter 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., provides that, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law. The Florida Uniform Traffic Control Law does not currently authorize the use of citrus harvesting equipment and citrus fruit loaders to the list of machinery authorized to transport certain perishable agricultural products or to authorize the use of certain motor vehicles to transport citrus.

### **Commercial Feed and Feedstuff**

The department is authorized by s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds. It does not currently have the authority to enforce laws and rules relating to the use of commercial feed and feedstuff.

The department's Feed Section is responsible for the enforcement and administration of the Florida Commercial Feed Law, chapter 580, F.S., and Chapter 5E-3, Florida Administrative Code. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and provides that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable. This bill would authorize the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption.

### **Recording Sounds or Images of a Farm or Farm Operations**

Chapter 810, F.S., provides various penalties for trespassing, ranging from a first degree felony to a third degree misdemeanor. Other than video voyeurism, Florida law does not provide penalties for covert video or audio recording in agricultural production areas.

Presently, certain people and animal protection groups attempt to represent what they consider to be animal abuse on America's farms and processing facilities by trespassing on those facilities, either under the cover of darkness or by other surreptitious means such as posing as potential employees, where they take hidden camera footage of those facilities. This footage is compiled and uploaded to their various websites and used for documentary films which are adversarial to the animal farming business. Examples of this type of investigation are present in the anti-factory farm campaigns of many organizations such as the Humane Society of the United States which sent an undercover investigator into a Cal-Maine egg farm in Waelder, Texas under the pretext of working for the farm for 28 days in 2010.<sup>1</sup> Undercover investigators who are members of the group Mercy for Animals have wired themselves with hidden cameras, to film animal agriculture at properties such as a multi-state egg supplier, an Iowa pig factory farm, a Texas dairy farm, and a Texas fish slaughter facility.<sup>2</sup>

The position of the Humane Society of the United States is that this legislation is not necessary because Florida law pertaining to trespass, theft of intellectual property, recording private conversations, and slander already protect farmers. The Society also believes that whistleblowers on farms alert officials to animal cruelty, environmental abuse, and dangers to the country's food supply.

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

**Section 1** amends s. 163.3162, F.S., to replace most references to the word "county" in the Agricultural Lands and Practices Act with the term "governmental entity." It adds a definition to this section for the term and specifies that it has the same meaning as provided in s. 164.1031, F.S., where "governmental entity" is defined to include local and regional government entities.

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<sup>1</sup> *Appalling Animal Abuse and Food Safety Threats at Top Egg Producer*, The Humane Society of the United State, November 17, 2010, found at [http://www.humanesociety.org/news/press\\_releases/2010/11/cal-maine\\_111710.html](http://www.humanesociety.org/news/press_releases/2010/11/cal-maine_111710.html) (last visited on January 18, 2012).

<sup>2</sup> *Undercover Investigation: Exposing Animal Abuse*, Mercy for Animals, found at <http://www.mercyforanimals.org/investigations.aspx> (last visited on January 18, 2012)

These changes have the effect of expanding from just counties to counties, municipalities, and regional governments, the types of governmental entities that are not authorized to charge an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural, under certain circumstances.

**Section 2** amends s. 206.41, F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the state without violating the public highway use restriction, thereby qualifying for the motor fuel tax refund provided in this section.

**Section 3** amends s. 316.515, F.S., to revise the Florida Uniform Traffic Control Law to allow the use of citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products between farms. It also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by equipment specified in this section.

**Section 4** amends s. 570.07, F.S., to authorize the department to enforce the laws and rules of the state relating to the use of commercial stock feed.

**Section 5** amends s. 580.036, F.S., to authorize the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

**Section 6** creates s. 810.127, F.S., to define the terms “audio or video recording function,” “farm,” “farm operation,” and “farm product.” It prohibits a person to knowingly enter any nonpublic area of a farm and, without prior written consent to record sounds or images of the farm or farm operations. This provision does not apply to:

- An employee or agent of the Department of Agriculture and Consumer Services acting under s. 570.15, F.S.
- An employee or agent of the Department of Business and Professional Regulation acting under chapter 450, F.S.
- A law enforcement officer conducting a lawful inspection or investigation.
- Any other government employee conducting official regulatory business.
- An engineer or his or her agent or employee acting under s. 471.027, F.S.
- A land surveyor and mapper or his or her subordinate, agent, or employee, as necessary for conducting any activity under chapter 472, F.S.
- A person acting on behalf of an insurer for inspection, underwriting, or claims purposes.

Violation of this section is a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding one year or a fine of \$1,000. The provisions in this section of the bill take effect October 1, 2012.

**Section 7** provides that except for the provisions of Section 6, this act shall take effect July 1, 2012.

**Other Potential Implications:**

None.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits a governmental entity from imposing an assessment or fee for stormwater management on certain lands. However, because this legislation has not yet been reviewed by the Revenue Estimating Conference, it is unclear if the reduction in revenues meets the threshold of the mandate or if an exemption applies.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

In 2009, the Revenue Estimating Conference (conference) made the following comment regarding identical legislation that is in section 1 of the bill: "Provisions of this bill that prohibit a county or municipality from imposing an assessment or fee for stormwater management on certain lands will have a negative indeterminate impact on local government revenues as determined by the conference."

**B. Private Sector Impact:**

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

The bill provides relief to citrus producers who pay certain taxes on motor fuel for use in citrus harvesting equipment or citrus fruit loaders.

Persons who are convicted of conducting audio or video surveillance on a farm without the owner's permission may incur a fine of \$1,000.

**C. Government Sector Impact:**

By providing a tax refund for fuel taxes on citrus harvesting equipment or citrus fruit loaders, the state will experience a loss of sales tax revenue. Because this bill has not yet been reviewed by the Revenue Estimating Conference, the fiscal impact on state government is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.