

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 146

SPONSOR: Agriculture and Consumer Services Committee and Senator Cowin

SUBJECT: Florida Agricultural Development Act

DATE: April 22, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates the Florida Agricultural Development Act to provide assistance to citizens who have been detrimentally affected by (North American Free Trade Agreement) NAFTA, the elimination of federal crop subsidies, and environmental protection mandates. The Florida Agricultural Development Authority (FADA) is created to authorize and establish farmer and beginning farmer loan programs and alternative agriculture assistance programs to:

Assist in the financing of: agricultural land acquisitions, improvements, technology, and depreciable agricultural property for the purpose of farming; soil and water conservation practices; research and development costs for qualified producers, processors, and manufacturers of agriculture products and support organizations; and, operating expenses and cash-flow requirements of farming; and,

Promote diversification of the farm economy.

The FADA would act as a facilitator between farmers and financial institutions. It could issue tax exempt bonds to lending institutions to fund agricultural loans and to participate in any federal programs designed to assist beginning farmers.

The bill directs the FADA to function as a public entity under the supervision of the Commissioner of Agriculture (commissioner) who will appoint seven board members, including the commissioner or a designee. It provides that the commissioner will assist, advise, and make recommendations regarding the operation, financing, and programs of the FADA. The FADA must prepare an annual report to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

The bill does not provide a startup funding source. The Department of Agriculture and Consumer Services has indicated that it will need approximately \$115,927 in non-recurring expenses for fiscal year 1999-2000 to carry out the provisions of the bill.

This bill creates sections 159.8082 and 570.251-570.275, Florida Statutes.

This bill amends sections 159.804 and 159.809, Florida Statutes.

II. Present Situation:

Florida farmers and agribusinesses affected by NAFTA, the elimination of federal crop subsidies, and environmental protection mandates have limited sources of financial assistance if they choose to transition into alternative agricultural crops. The federal government has three agricultural loan programs available to state farmers: the United States Department of Agriculture's Farm Services Agency Program, the Farm Credit System, and the Rural Business-Cooperative Service Program. Farmers meeting specific criteria may apply for this assistance, as provided for in the Federal Agriculture Improvement and Reform Act of 1996. Florida does not currently have an agricultural loan program to provide loans to beginning farmers or existing farmers who wish to convert to alternative agricultural crops or to alternative agricultural producers and processors.

According to the United States Department of Agriculture National Commission on Small Farms, there are approximately 39 states that have some type of state agricultural loan program. The purpose of Aggie Bonds is to provide an effective means for federal-state-industry linkages where government can assist beginning and first-time farmers to purchase land, farm equipment, farm buildings, and breeding livestock. The bonds offer limited tax incentives and allow credit decisions and financial risk to remain with local lending institutions.

Currently, the Department of Agriculture and Consumer Services operates AgVenture Services, a program designed to provide assistance in areas such as planning, marketing, research, facilities and equipment discounts, and resource network referrals for start-up agribusinesses and fledgling enterprises. While the department program does not provide loans or issue bonds, it has indicated that it already offers many of the services outlined in the bill.

III. Effect of Proposed Changes:

Section 1. Creates s. 570.251, F.S., to establish that s. 570.251-570.275, F.S., may be cited as the "Florida Agricultural Development Act."

Creates s. 570.252, F.S., to provide legislative findings. The Legislature finds within rural parts of the state an agricultural debilitating business economy exists and that these conditions have made the sale and purchase of agricultural land by and among family farmers a virtual impossibility. Furthermore, these conditions are adversarial to the family farm and rural communities that depend on agribusiness and unless Florida farm policy enhances opportunities for these individuals through program intervention, including financing activities, conditions exist to destroy the basic fabric of rural agriculture.

Creates s. 570.253, F.S., to provide definitions for the terms “agricultural improvements,” “agricultural land,” “agricultural producer,” “agricultural processor,” “authority,” “beginning farmer,” “bonds,” “depreciable agricultural property,” “farming,” “Internal Revenue Code,” “lending institution,” “mortgage,” “mortgage lender,” “mortgage loan,” “note,” “secured loan,” and “state agency.”

Creates s. 570.254, F.S., to create the Florida Agricultural Development Authority (FADA) to authorize and establish farmer and beginning farmer loan programs and alternative agriculture assistance programs to:

Assist in the financing of: agricultural land acquisitions, improvements, technology, and depreciable agricultural property for the purpose of farming; soil and water conservation practices; research and development costs for qualified producers, processors, and manufacturers of agriculture products and support organizations; and, operating expenses and cash-flow requirements of farming; and,

Promote diversification of the farm economy through the growth and development of new crops or livestock not customarily grown or produced in this state or that emphasizes a vertical integration of agricultural products into a finished agricultural product or byproduct for consumption or use.

Creates the FADA Board which consists of seven members, including the Commissioner of Agriculture or the commissioner’s designee. Authorizes the commissioner to appoint the following members of the board:

- C One member from the Farm Credit System,
- C One member from the Florida State Rural Development Council,
- C One member from the Florida Farm Bureau Federation,
- C One member who is an agricultural economist,
- C One member with bonding or lending experience, and
- C One member at large.

Provides for term limits for members; organization of the board; for the election of a chair and vice chair; the establishment of a four voting member quorum; and, per diem and travel expenses. Any meetings at which the Board addresses official business of the FADA shall be open and noticed to the public. Requires board members to give bond as required by law for public officers.

Creates s. 570.255, F.S., to provide for general powers of FADA which include, but are not limited to, the power to: issue negotiable bonds and notes in order to finance its programs; sue and be sued in its own name; have and alter a corporate seal; make and alter bylaws for its management and programs; make and execute agreements, contracts, and other instruments with any public or private entity; lease, purchase, accept a gift or donation of, or otherwise acquire, use, own, hold, improve, or otherwise deal in or with, real or personal property, and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any assets, loans and equity interests acquired in the financing of projects funded by the authority; procure insurance against any loss in connection with its operations and property interests; fix and collect fees and charges for its services by rule of the FADA; subject to an agreement with

bondholders or note holders, invest or deposit moneys of the authority in a manner determined by the authority; accept appropriations, gifts, grants, loans, or other aid from public or private entities; provide public and private entities with technical assistance, education, counseling, and grants; cooperate with other local, state, or federal governmental agencies to conduct agricultural studies and to exchange information with similar authorities and agencies in other states; enter contracts for services; and adopt rules pertaining to programs under the jurisdiction of the authority, definitions, guidelines, and administration of the FADA.

Creates s. 570.256, F.S., to authorize the commissioner to appoint the executive director of the FADA to: advise the authority on matters relating to agricultural land and property and finance; carry out all directives from the authority; hire and supervise staff; and be custodian of all books, documents, minute books, seals, and papers filed with the authority.

Creates s. 570.257, F.S., to require the FADA to submit a report regarding its operations, accomplishments, farmers need assessments, financial information and other information as specified to the Governor, President of the Senate, the Speaker of the House of Representatives, and the Auditor General by February 15 of each year. Requires the FADA to have certified public accountants prepare statements of financial condition including management review commentary.

Creates s. 570.258, F.S., to require that the authority use surplus moneys¹ to provide loans, grants, subsidies, and other services or assistance to beginning farmers or agricultural producers.

Creates s. 570.259, F.S., to provide that state and federal programs may be combined to facilitate the FADA's intended purpose.

Creates s. 570.260, F.S., to direct the FADA to develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. Allows the FADA to participate in federal programs and to provide by rule the criteria by which a beginning farmer is eligible for a loan under the program. The FADA is authorized to provide specific conditions and covenants in a mortgage or secured loan that the loan may not be assumed or that any interest in the land or improvements or depreciable property may not be leased, sold or otherwise conveyed without prior written consent. The FADA is also authorized to disclose in a mortgage or secured loan that the authority has the power to raise the interest rate of a loan in certain circumstances.

Creates ss. 570.261 and 570.262, F.S., to provide loans directly or indirectly to "beginning farmers." Indirect lending activities will be conducted through a mortgage lender. The terms and provisions of the mortgage or secured loan contract in both circumstances are established by the rules of the FADA.

Creates s. 570.263, F.S., to authorize the FADA to purchase mortgage loans and secured loans from mortgage lenders. Mortgage lenders must certify that the mortgage or secured loans purchased are loans made to beginning farmers.

¹Moneys not used to service bonds and notes, pay administrative expenses, or provide for working capital.

Creates s. 570.264, F.S., to authorize the FADA, subject to agreement with bondholders or note holders, to renegotiate, waive default, foreclose, commence, prosecute, and enforce a judgment in any action regarding mortgages and secured loans.

Creates s. 570.265, F.S., to authorize the FADA to issue negotiable bonds and notes in principal amounts that are necessary to provide sufficient funds for achievement of its corporate purposes. Bonds and notes are payable solely and only out of the moneys, assets, or revenues of the FADA and bonds and notes are not an obligation of the state or any political subdivision thereof. Bonds and notes can only be authorized by a resolution of the FADA. The FADA is required to publish a notice of intention to issue bonds or notes in a newspaper of general circulation published in the state. Bonds and notes issued for financing the beginning farmer loan program are exempt from taxation by the state and interest earned on bonds and notes are exempt from corporate income tax.

Creates s. 570.266, F.S., to establish bond reserve funds to be used solely for the payment of the principal of bonds secured in or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed before maturity.

Creates s. 570.267, F.S., to provide for remedies of bondholders and note holders and provides for the appointment of a trustee to represent the holders of bonds or notes in the event the authority defaults in the payment of principal or interest or fails or refuses to comply with the provisions of this act. This section also specifies the duties and powers of the trustee representing bond or note holders in the enforcement and protection of their rights.

Creates s. 570.268, F.S., to pledge that the state will not interfere with the rights of the FADA to fulfill the terms of agreements made with the holders of the bonds or notes or in any way impair the rights and remedies of the holders until the bonds or notes and all related costs are fully met and discharged.

Creates s. 570.269, F.S., to deem bonds and notes as legal investments and that bonds and notes are also securities that may be deposited with and received by public officers, state departments and agencies, and political subdivisions.

Creates s. 570.270, F.S., to provide banking and accounting requirements for moneys of the FADA and authorizes the Auditor General periodically to examine its accounts and books. The FADA is required to submit reports of every external examination of the authority's books and accounts to the Governor, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives.

Creates s. 570.271, F.S., to limit liability for members of the FADA and persons acting on its behalf, and to indemnify them from personal liability in carrying out the powers and duties of this act. The FADA is authorized to carry insurance or other indemnification for any actions arising out of such duties.

Creates s. 570.272, F.S., to require state officers, departments, and agencies to render services to the FADA within their respective functions as requested by the authority.

Creates s. 570.273, F.S., to provide that this act, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

Creates s. 570.274, F.S., to require written disclosure of conflicts of interest to the FADA. Prohibits the member or employee having the interest to participate in an action by the authority with respect to such contract or mortgage lender or other lender. Specifies conflicts of interest with respect to the executive director.

Creates s. 570.275, F.S., to exempt the FADA from the competitive bid laws of the state.

Section 2. Creates s. 159.8082, F.S., to establish an agricultural development bond pool to be used solely to provide written confirmations for private activity bonds to the FADA to finance agricultural development.

Section 3. Amends s. 159.804, F.S., to allocate, on January 1, 2000, the next \$10 million of the state volume limitation to the agricultural development pool. Requires allocations to be increased in subsequent years in \$2 million increments, as specified.

Section 4. Amends s. 159.809, F.S., to specify that on November 16 of each year, any portion of the initial allocation, other than as provided in ss. 159.8082 and 159.8083, F.S., for which an issuance report for bonds has not been received, shall be added to the state allocation pool.

Section 5. Provides that this act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Art. VII, s. 18, State Constitution, imposes a requirement upon the Legislature for the funding of mandates on units of county and municipal government in certain defined circumstances. Section 570.265, F.S., as created in this bill, exempts all bonds and notes of the Authority from state taxation, including “. . . income, documentary stamp taxes, and intangible taxes . . . and corporate income tax under chapter 220.” A disposition of a large portion of these taxes is to units of local government where they are deposited in the Local Government Housing Trust Fund, in the case of documentary stamp taxes, or to the Revenue Sharing Trust Fund, in the case of the Intangibles Tax. Any loan activity which generates a local government tax exemption greater than \$1.4 million statewide would fall under the provisions of this constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

As discussed, above, there will be a loss of tax revenue to the State of Florida due to the exemption from taxation contained in s. 570.265, F.S., as created by the bill. The magnitude of the loss will be a function entirely of the amount of loans and notes issued, which cannot be estimated at this time.

B. Private Sector Impact:

Under the Community Reinvestment Act, lending institutions are required to make a small percentage of their lending activities available for community-based financing activities. The “aggie bond” program qualifies as part of the community based financing activity requirements under the Community Reinvestment Act, while the program also provides for collateralized/federally insured lending activities.

C. Government Sector Impact:

According to the Department of Agriculture and Consumer Services, this bill should only be considered in conjunction with the department’s 1999-2000 legislative budget request for 2 FTEs, a vehicle, administrative funding, and a promotional allocation for initial startup. If this bill is passed by the Legislature, the department will need some initial non-recurring General Revenue funding to ensure program success. The salaries and expenses will be paid by the Florida Agricultural Development Authority after its first year of operation, when other revenue streams have been identified and secured. Without the needed funding, this program will be an “unfunded mandate” and could potentially divert in excess of \$125,000 from other critical programs.

	Fund	FY 1999-00	FY 2000-01	FY 2001-02
NON-RECURRING COSTS:				
Positions -				
Program Planning Coordinator	GR	42,916		
Administrative Assistant I	GR	24,354		
OPS -				
Clerk (26 weeks @ \$8.00 hourly)	GR	4,160		

	Fund	FY 1999-00	FY 2000-01	FY 2001-02
Expenses -				
2 standard expense packages @ \$8,611 & \$ 6,665	GR	15,276		
OCO -				
1 4x4 vehicle	GR	22,617		
2 standard OCO packages @ \$3,302	GR	6,604		
Total Non-Recurring Costs:	GR	\$115,927	0	0
RECURRING COSTS:		0	0	0
TOTAL OF ALL COSTS:	GR	\$115,927	\$0	\$0

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
