

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1660

SPONSOR: Comprehensive Planning Committee, Agriculture Committee, Senators Argenziano, Alexander, and others

SUBJECT: Agricultural Lands and Practices

DATE: April 21, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Fav/CS
2.	Herrin	Yeatman	CP	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute (CS) sets forth legislative findings regarding the importance of agriculture to the economy and the people of the state of Florida. It prohibits a county from placing restrictions on an activity of a farm operation on land classified as agricultural land if the activity is regulated by best-management practices, interim measures, or regulations developed by specified state agencies and adopted pursuant to ch. 120, F.S., as part of a statewide or regional program. It also prohibits a county from regulating the activities of a farm operation that are expressly regulated by certain federal agencies.

This CS provides that a county may regulate an activity of a farm operation if the activity is located within a wellfield protection area and the implemented best management practice, interim measure, or regulation governing the activity does not address wellfield protection.

The provision of this CS relating to duplication of regulation may not be construed to allow an existing farm operation to change to a more excessive farm operation if located next to an established homestead or business. This CS does not apply to counties meeting certain criteria. Further, the CS provides that a county ordinance regulating the transportation or land application of sewage sludge is not a duplication of regulation.

This committee substitute creates section 163.3162 of the Florida Statutes.

## II. Present Situation:

Article VIII, s. 1(g) of the State Constitution affords counties broad “home rule” power to enact ordinances that are not inconsistent with general or special law. Chapter 125, F.S., outlines certain powers of the county governments which include among other powers the right to:

- Prepare and enforce comprehensive plans for the development of the county.
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- Adopt ordinances and resolutions necessary for the exercise of its powers.
- Perform any other acts that are not inconsistent with the law, which acts are in the common interest of the people of the county.

Chapter 127, F.S., delegates to the counties the right of eminent domain to appropriate property for any county purpose. The county property appraiser is directed by s. 193.461, F.S., to classify annually all lands as either agricultural, which lands must be used primarily for bona fide agricultural purposes, or nonagricultural.

### **Florida Right to Farm Act**

The Florida Right to Farm Act, s. 823.14, F.S., protects agricultural activities conducted on farm land from nuisance suits. The Legislature recognizes that agricultural activities near urbanizing areas are subject to suit based on the theory of nuisance and this concern over liability may cause farm land to be removed from agricultural use prematurely.<sup>1</sup> Under the act, a farm that has been in operation for at least one year since, and that was not a nuisance at the time of its established operation, is not a public or private nuisance if such farm operation complies with generally accepted agricultural and management practices. Nevertheless, the following conditions shall constitute evidence of a nuisance:

- The presence of improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that could be harmful;
- The presence of improperly built or maintained septic tanks or bathrooms;
- The keeping of diseased animals which are dangerous to human health, unless kept in compliance with a state or federal disease control program; and
- The presence of unsanitary slaughter areas which may give rise to harmful diseases.<sup>2</sup>

Also, the act does not allow a farming operation to change to a “more excessive farm operation with regard to noise, odor, dust, or fumes” if located adjacent to an established homestead or business on March 15, 1982.<sup>3</sup>

In 2000, the act was revised to include a limitation on duplicate regulation of farm activity on land classified as agricultural land where best management practices have been adopted in accordance with Chapter 120, F.S., rule making procedures as part of a state or regional regulatory program. This limitation does not apply in instances where the farm activity is

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<sup>1</sup> S. 823.14(2), F. S.

<sup>2</sup> S. 823.14(4), F.S

<sup>3</sup> S. 823.14(5), F.S

regulated by a federal program or the best management practices have not been adopted pursuant to Chapter 120, F.S.

### **Land Development Regulations**

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Section 163.3202, F.S., requires each county and each municipality to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan. Section 163.3213, F.S., defines the term "land development regulation" to mean:

an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553, F.S.

Such regulations must contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and must at a minimum:

- Regulate the subdivision of land;
- Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space;
- Provide for protection of potable water wellfields;
- Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensure the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulate signage;
- Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177, F.S., and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. Not later than 1 year after its due date established by the state land planning agency's rule for submission of local comprehensive plans pursuant to s. 163.3167(2), F.S., a local government shall not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the local government.
- Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.<sup>4</sup>

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<sup>4</sup> S. 163.3202(2), F.S.

### III. Effect of Proposed Changes:

**Section 1.** The CS creates the “Agricultural Lands and Practices Act”; sets forth legislative findings that emphasize the importance of agriculture to the health, safety, and welfare of the people of the state; and provides the intent of the act is to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.

The CS includes by reference the definitions of “farm” and “farm operation” that are set forth in s. 823.14, F.S. Defines “farm product” as any plant listed in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom.

The CS prohibits a county from adopting an ordinance, resolution, regulation, rule, or policy that would limit an activity of a bona fide farm operation on land that is classified as agricultural land pursuant to s. 193.461 F.S., if such activity is regulated through best-management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under ch. 120, F.S., as part of a statewide or regional program. The CS also prohibits a county from regulating an activity that is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

The CS provides that when a farm operation takes place within a wellfield protection area and the implemented best management practice, interim measure, or regulation does not address wellfield protection, the county government may regulate the activity. However, this provision does not limit the powers and duties of local governments relating to Everglades improvement and management and or a local government’s ability to address an emergency.

The provision of this CS relating to duplication of regulation may not be construed to allow an existing farm operation to change to a more excessive farm operation with regard to traffic, noise, odor, dust, or fumes if located next to an established homestead or business.

This CS does not apply to counties meeting certain criteria. Further, the CS provides that a county ordinance regulating the transportation or land application of sewage sludge is not a duplication of regulation.

**Section 2.** Provides that the act shall take effect July 1, 2003.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Proponents of this committee substitute contend the owner or operator of land that is an integral part of a farm operation or that is classified as agricultural land pursuant to s. 193.461 F.S, would experience a reduction in regulatory compliance costs because the committee substitute prohibits a county from adopting an ordinance or policy that affects activities regulated through best-management practices or by an existing state, regional, or federal program.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.