HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 Agriculture
SPONSOR(S): Agriculture & Natural Resources Policy Committee, Williams
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2074

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	11 Y, 0 N	Kaiser	Reese
2)	Natural Resources Appropriations Committee		Bellflower	Dixon
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 7103 addresses various issues relating to agriculture.

The bill prohibits, with some limited exceptions, counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs)[1]. The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations.[2] The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and where a program is operated under a delegation agreement from a state agency or a water management district.

The bill creates the "Agricultural Land Acknowledgement Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land. The bill provides that the acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale. The Department of Agriculture and Consumer Services is granted rule-making authority to implement the provisions of the act.

The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by said person in the state, from obtaining a local business tax receipt. The bill amends the definition of "farm tractor" to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses legislation enacted in 2005 and returns tropical foliage to exempt status from the provisions of the License and Bond law[3]. The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations. The definition of "nonresidential farm building" is clarified to more accurately define what types of buildings are exempt from county or municipal codes and fees.

The bill allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state, providing agricultural producers with increased insurance options offered by fiscally sound insurers. And lastly, the bill amends Chapter 823, F.S., to mirror the language in Chapter 403, F.S., regarding the materials used in agricultural production that may be burned in the open.

This legislation was reviewed by the Revenue Estimating Conference (conference) on March 19, 2010. The conference determined that this bill has an indeterminate and insignificant fiscal impact on state and local revenues.

The effective date of this legislation is July 1, 2010.

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[1] The BMPs interim measures or regulations must have been adopted as rules under Chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.
[2] *Id*
[3] Sections 604.15-604.34, F.S.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:
In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural[4], if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

This bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit or implements BMPs[5].

The bill permits counties that adopted ordinances prior to March 1, 2009, to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for implementation of BMPs[6]; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be of equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

[4] Section 193.461, F.S.
[5] The BMPs interim measures or regulations must have been adopted as rules under Chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.
[6] *Id*

Section 2:
Current law[7] states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rule-making authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Section 3:
Florida law[8] exempts any natural person from obtaining an occupational license to sell agricultural products[9] that were grown in the state by said natural person. While the statutes provide a definition for "person," no definition is provided for "natural person." Hence, the statute is interpreted differently in different counties in regards to the exemption. The bill strikes the word "natural" to exempt any "person" from obtaining an occupational license.

[7] Section 823.14(4), F.S.
[8] Section 205.064, F.S.
[9] Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.

Section 4:
Florida law provides various exemptions from obtaining a driver's license, one of those being "…any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway."[10] Currently, a farm tractor is defined in statute[11] as "a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Section 5:
The Florida License and Bond Law (law) [12] was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term "agricultural products" to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

Section 6:
Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998 when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, then-Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney, "*…The plain language of sections 553.73(7)(c)[13] and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a*

[10] Section 322.04 (1)(b), F.S.
[11] Section 322.01(20), F.S.
[12] Sections 604.15-604.34, F.S.
[13] This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm…"

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of "nonresidential farm building" is amended to clarify that it may a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

Section 7:
Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

Section 8:
There are currently two sections in statute[14] that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning. The bill amends the language in Chapter 823, F.S., to mirror the language in Chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

Section 2: Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

[14] ss. 403.707(2)(e) and 823.145, F.S.

Section 3: Amends s. 205.064, F.S.; revises exemption eligibility for a local business tax receipt.

Section 4: Amends s. 322.01, F.S.; revises the definition of "farm tractor."

Section 5: Amends s. 604.15, F.S.; revises the definition of "agricultural products."

Section 6: Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

Section 7: Amends s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 10-11) Amount/FTE	(FY 11-12) Amount/FTE
1. Revenues:		
Agricultural Products Dealers License (General Inspection Trust Fund)	$ (22,800)	$ (22,800)

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (conference) reviewed this legislation on March 19, 2010. The conference determined that the provisions of this bill would have a negative indeterminate impact on local government revenues. See "Fiscal Comments" section below.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, it will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

The Division of Marketing (division) within the Department of Agriculture and Consumer Services reports that there are approximately 598 tropical foliage dealers who are currently licensed by the division. Of the 598 who have tropical foliage licenses, only 76 deal in tropical foliage alone. By exempting tropical foliage dealers from the definition of agricultural products, the division will experience a loss of revenue in the General Inspection Trust Fund of $22,800 for FY 2010-11 and a loss of $22,800 for FY 2011-12. The loss of revenue is insignificant.

The Revenue Estimating Conference (conference) made the following comments relate to identical legislation filed during the 2009 Legislative Session.

Provisions of this bill that (1) prohibit a county or municipality from imposing an assessment or fee for storm water management on certain lands, and (2) exempt nonresidential farm buildings and fences from county or municipal codes or fees will have a negative indeterminate impact on local government revenues as determined by the Revenue Estimating Conference.

In 2008, the Office of Economic and Demographic Research (EDR) was able to identify eleven county stormwater utilities. Of those, six indicated that they exempted agricultural parcels from paying any assessment or fee and five indicated that they did not provide such an exemption. In March of 2008, EDR conducted a telephone survey of the five county stormwater utilities that had indicated that they did not fully exempt agricultural lands. The purpose of the survey was to attempt to identify the potential revenue that might be lost if the provisions of the proposed legislation relating to stormwater management assessments or fees were enacted. Two of the five counties responded to the survey as follows:

County	Potential Lost Revenue
Sarasota	$118,500
Pasco	$71,924

Total $190,424

The amendment to s. 604.50, F.S., expands the exemption afforded to nonresidential farm buildings from the state, city and county building codes to any nonresidential farm building or farm fence from any county or municipal code or fee. This would appear to include land use planning, environmental and virtually any local code or fee, including locally imposed impact fees.

According to a survey conducted by the Legislative Committee on Intergovernmental Relations in 2006, no local governments reported imposing impact fees specifically on agricultural buildings. In a limited telephone survey conducted in March 2008, respondents indicated that local construction projects were typically evaluated for infrastructure impacts, such as public safety or transportation, at the time of plan review and permitting. Since nonresidential farm buildings are not subject to state and local building codes, they often escape this scrutiny. Only one county, Jefferson County, reported imposing a fee on a nonresidential farm building in the past. According to Jefferson County staff, they imposed a public safety impact fee on a 4,650 square foot nonresidential agricultural building due to its intended office and warehouse uses. The fee was believed to be $1,488.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because the bill reduces the authority that counties have to raise revenues. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees.

The Revenue Estimating Conference (conference) determined that the provisions of this legislation would have had a negative indeterminate impact on local government revenues. Staff anticipated that the impact would not exceed $1.9 million statewide. Therefore, the bill should be exempt from the mandates provision because the fiscal impact is insignificant.

Additionally, the mandate provision may apply because the bill prohibits local cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom. The Revenue Estimating Conference has determined that the fiscal impact is insignificant.

In the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida Constitution prohibits the legislature from enacting, amending or repealing a law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989, unless the law is approved by a two-thirds vote of the membership of each house.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rule-making authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (department) states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over $97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. During the 2008-09 FY, the department processed claims totaling $13,325 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES