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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 858
INTRODUCER:	Agriculture Committee and Senator Hays
SUBJECT:	Agriculture
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Wood	Yeatman	CA	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute includes the following provisions related to agriculture:

- Prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes.
- Prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices. The committee substitute provides an exception under specified circumstances for counties that adopted a stormwater ordinance before March 1, 2009, provided credits are given.
- Allows a county to enforce its wetland protection acts adopted before July 1, 2003.
- Creates the Agricultural Land Acknowledgement Act to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land.
- Requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous sustainable agricultural lands as a condition of the political subdivision issuing the permits.

- Expands eligibility for exemption from a local business tax for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products.
- Expands the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.
- Reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law.
- Exempts farm fences from the Florida Building Code and expands the definition of nonresidential farm buildings that are exempt from county or municipal codes and fees.
- Allows additional fiscally sound multi-peril crop insurers to sell crop insurance in Florida.
- Makes section 823.145, Florida Statutes, consistent with section 403.707, Florida Statutes, relating to the disposal of certain materials used in agricultural operations.

This committee substitute amends sections 163.3162, 205.064, 322.01, 604.15, 604.50, 624.4095 and 823.145 of the Florida Statutes.

This committee substitute creates section 163.3163, Florida Statutes.

II. Present Situation:

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.

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. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit from stormwater utility fees are the only ones who pay. 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.

Right to Farm Act

Section 823.14, F.S., also known as the Florida Right to Farm Act (RTFA), has been law since 1979. In the RTFA, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. It found that as Florida's population has grown, development of rural areas often places subdivision and multi-family dwellings near farming operations. The residents of these developments sometimes consider existing agricultural operations to be a noise, odor, or visual nuisance, even when the operations adhere to generally accepted agricultural practices. Some residents lodge complaints with local government, state agencies or other entities. In most cases where the Department of Agriculture and Consumer Services has responded to a complaint, a site visit has revealed that the operation is conducting its activities appropriately. The purpose of the RTFA was to protect reasonable agricultural activities on farm land from nuisance suits. Generally, no farm in operation for a year or more since its established date of operation, which was not a nuisance at the established date of operation, can be a public or private nuisance if the farm operations conform to generally accepted agricultural and management practices. If an existing farm's operations expand to a more excessive operation with regard to noise, odor, dust, or fumes, it can be considered a nuisance if it is adjacent to an established homestead or business as of March 15, 1982. Growers and farmers report that the RTFA has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct agriculture operations. There is further conflict in some instances when there is a lack of record as to whether the farming operation or the urban area was in existence first.

Local Business Tax

Section 205.022, F.S., defines "person" to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to "natural persons" engaged in the selling of certain agricultural products. Currently, cities and one county are interpreting the term "natural person" to exclude corporations, partnerships and other non-natural persons for exemption purposes.

Dealers in Agricultural Products

The Agricultural License and Bond Law, ss. 604.15-604.34, F.S., gives 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 the 2005 Legislative Session, the definition of the term "agricultural products" was amended 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 the growers or groups of growers selling their own products; 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 has not been proven beneficial to the foliage industry and it has requested a reenactment of the exemption.

Nonresidential Farm Buildings

Sections 553.73 and 604.50, F.S., exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings. In 1974, the Legislature established statewide standards known as the State Minimum Building Codes, and in 1998, the Legislature created a statewide unified building code.[1] Nonresidential farm buildings have been exempt from building codes since 1998. In 2001, Attorney General Robert Butterworth opined:

> The plain language of sections 553.73(7)(c)[2] 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 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.[3]

Despite the Attorney General Opinion, there have been instances of some counties and municipalities assessing fees and requiring permits for nonresidential buildings, even though the buildings are exempt from building codes and are not inspected.

Crop Insurance

Crop insurance is purchased by agricultural producers, to protect themselves 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 U.S., 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.

[1] Fla. Att'y Gen. Opinion 2001-71, 2001 WL 1194681 (Fla. A.G. 2001).
[2] The cited statute has since changed to s. 553.73(9)(c), F.S.
[3] Fla. Att'y Gen. Opinion 2001-71.

Disposal of Agricultural Waste

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. Chapters 823 and 403, F.S., both regulate open burning of materials used in agricultural production. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. Section 823.145, F.S., under the Department of Agriculture and Consumer Services, differs in that it only lists mulch plastic as approved for open burning.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to prohibit a county from enforcing any regulations on agricultural land if the activity is regulated by Best Management Practices, interim measures or regulations 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; or if the activity is regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

This section prohibits a county government from charging an assessment or fee for stormwater management on a farm operation on agricultural land, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 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.

Under specified circumstances, this section allows a county to charge an assessment on a bona fide farm operation for water quality or flood control benefit if credits against the assessment are provided for implementation of one of the following.

- Best management practices.
- Stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit or works-of-the-district permit.
- Best management practices or alternative measures that the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices.

The powers of a county to enforce applicable wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, are not limited by the provisions of the bill. It does not limit a county's powers to enforce wetlands, springs protection or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area. In addition, it does not limit the powers of a county to enforce ordinances, regulations, or rules as directed by

law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district. The provisions of this bill do not apply to a municipal services benefit unit established before March 1, 2009, predominantly for flood control or water supply benefits.

Section 2 creates s. 163.3163, F.S., to create the Agricultural Land Acknowledgement Act to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land. This section defines the terms "contiguous," "farm operation," and "sustainable agricultural land." It requires that before a political subdivision issues a local land use permit for nonagricultural land contiguous to agricultural land, that as a condition of issuing the permit, the permit applicant must sign and submit to the political subdivision, in a format that is recordable, a written Acknowledgement of Contiguous Sustainable Agricultural Land. The acknowledgement must be filed and recorded in the official records of the county in which the political subdivision is located. It also authorizes the Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, to adopt rules to administer this section.

Section 3 amends s. 205.064, F.S., to exempt farms that operate as business entities other than sole proprietorships from being required to obtain a local business tax receipt to sell their own agricultural products.

Section 4 amends s. 322.01, F.S., to expand the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another. Under s. 322.04, F.S., the driver or operator of a "farm tractor" is exempt from obtaining a driver's license.

Section 5 amends s. 604.15, F.S., to revise the definition of "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products such as license and bond laws.

Section 6 amends s. 604.50, F.S., to exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 7 amends s. 624.4095, F.S., to allow additional fiscally sound multi-peril crop insurers to meet the statutorily required capital and surplus requirements for admission into the state and allows the Office of Insurance Regulation latitude in considering financial accounting matters for crop insurers. It provides that gross written premiums for certain crop insurance not be included when calculating the insurer's gross writing ratio. It requires that liabilities for ceded reinsurance premiums be netted against the assets for amounts recoverable from reinsurers, and requires that insurers who write other insurance products must disclose a breakout of the gross written premiums for federal multi-peril crop insurance.

Section 8 amends s. 823.145, F.S., to remove inconsistent statutory language relating to the materials used in agricultural operations that may be disposed of by open burning. The changes in this section would make s. 823.145, F.S., consistent with s. 403.707, F.S., which is administered by the Department of Environmental Protection.

Section 9 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute reduces the authority of counties and municipalities to collect stormwater fees and local business taxes. This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate.

Subsection (d) of section 18 of Article VII, Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2009-2010 $1.88 million).

If it is determined that this committee substitute has more than an insignificant fiscal impact, the committee substitute will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute removes tropical foliage from the definition of agriculture products and eliminates the requirements that those who sell tropical foliage are required to be licensed. This will result in a cost savings to the dealers. Florida tropical foliage producers will see an increase in financial risk as a result of the exemption.

There should also be some undetermined financial relief to agricultural operations via specific exemptions from or reductions in stormwater assessments and municipal code requirements and fees for farm fences and certain farm buildings.

C. Government Sector Impact:

This committee substitute will reduce revenues by $18,900 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services due to the elimination of the licensing requirements on sellers of tropical foliage.

The committee substitute will limit the ability of local governments to collect stormwater assessments, fees and local business taxes. This fee limitation will differ from county to county.

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.)

CS by Agriculture Committee on March 7, 2011:
A technical change was recommended that did not change the substance of the original bill.

B. Amendments:

None.