

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Agriculture

SPONSOR(S): State Affairs Committee; Criminal Justice Subcommittee; Albritton

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 2 N	Kaiser	Blalock
2) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Lolley	Massengale
4) State Affairs Committee	13 Y, 2 N, As CS	Kaiser	Hamby

SUMMARY ANALYSIS

This bill addresses several issues relating to agriculture in the state.

- Current law prohibits a county from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances. Current law also permits any county that, before March 1, 2009, had adopted certain ordinances or resolutions, to continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, under certain circumstances. The bill replaces the word "county" with "governmental entity" in the provisions described above to expand the types of governmental entities for which the above provisions apply. The bill also provides a definition for governmental entity and specifies that the term does not include a water control district or a special district created for water management purposes.
- Current law provides that a person who uses motor fuel for agricultural or aquacultural purposes in farm equipment that has not been driven or operated upon the public highways of the state is entitled to a refund of state taxes imposed on the motor fuel. The public highway use restriction does not apply to the movement of a farm vehicle or farm equipment between farms. The bill adds citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above. The bill also amends the Florida Uniform Traffic Control Law to include 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, and includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by such machinery.
- The bill revises the powers and duties of the Department of Agriculture and Consumer Services to include enforcing the state laws and rules relating to the use of commercial feed stocks. In addition, the bill requires 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 safety and wellbeing and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.
- The bill reduces, from 10 to 5, the acreage required for a winery to qualify as a certified Florida Farm Winery and provides the certification applies to wines made from vegetables as well as fruits.
- The bill exempts farm signs from the Florida Building Code and any county or municipal code or fee. The bill also defines "farm sign" as "a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm." The bill also requires farm signs on public roads to meet certain requirements.

The bill does not appear to have a fiscal impact on state government. The Revenue Estimating Conference estimates that the bill would have a fiscal impact on cities of approximately \$.9 million.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1021g.SAC

DATE: 2/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Stormwater Management Assessments

In 2011, the Legislature overrode the veto of CS/HB 7103, which passed the House and Senate during the 2010 Legislative Session. CS/HB 7103, in part, amended s. 163.3162(3)(b), F.S., to specify 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).¹

In addition, CS/HB 7103 amended s. 163.3162(3)(c), F.S., to specify 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;²
- 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 CS/HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands. However, since the stormwater management assessment provisions described above currently only apply to counties, they do not currently apply to the City of Palm Coast.

Effect of Proposed Changes

The bill creates s. 163.3162(2)(d), F.S., to define the term "governmental entity" as "having the same meaning as provided in s. 164.1031, F.S."³ The term does not include a water control district established under chapter 298, F.S., or a special district created by a special act for water management purposes." The bill amends ss. 163.3162(3)(b) and 163.3162(3)(c), F.S., by replacing the word "county" with the words "governmental entity" in the provisions of those sections described above. This has the effect of expanding the types of entities that are prohibited from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has an NPDES permit, ERP, or works-of-the-district permit or implements best management practices (BMPs), and that can continue, if certain requirements are met, to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural.

¹ The BMPs 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 Governmental entity is defined in s. 164.1031, F.S., to include local and regional governmental entities. "Local governmental entities" includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. "Regional governmental entities" includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

Motor Fuel Tax Refund

Section 206.41(4)(c), F.S., specifies that a person who uses motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes that has paid the local option fuel tax, an additional tax designated as the "State Comprehensive Enhanced Transportation System Tax," or fuel sales tax, is entitled to a refund of such tax. 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 the public highways of the state does not apply to the movement of a farm vehicle or farm equipment between farms.

Effect of Proposed Changes

The bill amends s. 206.41(4)(c), 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 and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

Transporting Farm Products

Chapter 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., specifies that, notwithstanding any other provisions of law, 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.

Effect of Proposed Changes

The bill amends s. 316.515(5)(a), F.S., to include 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, and includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by specified equipment.

DACS—Rulemaking Authority

The Department of Agriculture and Consumer Services has the authority under 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.

Chapter 580, F.S., provides for the regulation of commercial feed and feedstuff. 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 specifies 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. Such rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, non-nutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and their products, which are used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feedstuff.
- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required by Florida law.
- Establishing product labeling requirements for distributors.

- Limiting the use of drugs in commercial feed and prescribe feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.

Effect of Proposed Changes

The bill amends s. 570.07, F.S., authorizing the department to enforce laws and rules of the state relating to the use of commercial feed and feedstuff.

The bill also amends s. 580.036, F.S., requiring 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.

Florida Farm Winery Certification

Present Situation

Section 599.004, F.S., establishes the Florida Farm Winery program (program) within the Department of Agriculture and Consumer Services (DACS). Under this program, a winery may qualify as a tourist attraction only if it is registered with and certified by the DACS. A winery may not claim to be certified unless it has received written approval from the DACS.

To qualify for the program, a winery must:

- Produce or sell less than 250,000 gallons of wine annually.
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
- Be open to the public for tours, tastings, and sales at least 30 hours each week.
- Make annual application to the DACS for recognition as a Florida Farm Winery, on forms provided by the DACS.
- Pay an annual application and registration fee of \$100.

To maintain certification and recognition in the program, a winery must comply with the qualifications provided above. The Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction.

The DACS, in coordination with the Viticulture Advisory Council, must develop and designate by rule a Florida Farm Winery logo, emblem, and directional sign to guide the public to wineries participating in the program. The logo and emblem of certified Florida Farm Winery signs must be uniform.

Upon request of a participant in the program, the Department of Transportation must acquire and place the logo, emblem, and directional signs on the rights-of-way of interstate highways and primary and secondary roads. All costs for placement of the signs must be paid by the participant in the program requesting the signs. However, the cost of placing a sign cannot exceed \$250 and the annual permit fee cannot exceed \$50.

Participants in the program must pay to the DACS a licensing fee of \$10 each year for each Florida Farm Winery logo, emblem, and directional sign in place. All fees collected, except as otherwise provided by this section, must be deposited into the Viticulture Trust Fund and used to develop consumer information on the native characteristics and proper use of wines.

Effect of Proposed Changes

The bill amends s. 599.004, F.S., to reduce the acreage from 10 acres to 5 acres required for a winery to qualify as a certified Florida Farm Winery. The bill also provides that certification applies to wines made from produce other than grapes.

Farm Signs

Present Situation

Section 604.50, F.S., specifies that any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.⁴ "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.⁵ "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c), F.S., or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 479.11(4)-(8), F.S., prohibits signs on public roads that:

- Are within 100 feet of any church, school, cemetery, public park, public reservation, public playground, or state or national forest, when such facility is located outside of an incorporated area, except as provided in s. 479.16, F.S.
- Display intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system or which is illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate their vehicles. If the sign is on the premises of an establishment as provided in s. 479.16(1), F.S., the local government authority with jurisdiction over the location of the sign shall enforce the provisions of this section as provided in chapter 162 and this section.
- Use the word "stop" or "danger," or present or imply the need or requirement of stopping or the existence of danger, or which is a copy or imitation of official signs, and which is adjacent to the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system.
- Is placed on the inside of a curve or in any manner that may prevent persons using the highway from obtaining an unobstructed view of approaching vehicles and which is adjacent to the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system.
- Is located upon the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system.

Section 479.16(1), F.S., provides that the following signs are exempt from the requirement that a permit for a sign be obtained under the provisions of ch. 479, F.S., but are required to comply with the provisions of ss. 479.11(4)-(8), F.S.:

- Signs erected on the premises of an establishment, which signs consist primarily of the name of the establishment or which identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment and which comply with the lighting restrictions under department rule adopted pursuant to s. 479.11(5), or signs owned by a municipality or a county located on the premises

⁴ Section 604.50, F.S.

⁵ Section 823.14, F.S.

of such municipality or such county which display information regarding government services, activities, events, or entertainment. For purposes of this section, the following types of messages shall not be considered information regarding government services, activities, events, or entertainment:

- Messages which specifically reference any commercial enterprise.
- Messages which reference a commercial sponsor of any event.
- Personal messages.
- Political campaign messages.

Effect of Proposed Changes

The bill exempts farm signs from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. The bill also defines "farm sign" as a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.

The bill also provides that farm signs on public roads may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4)-(8), F.S., described above. In addition, the bill divides s. 479.11(5), F.S., into two paragraphs to specifically provide that local governments do not have authority over farm signs even if they are on the premises of an establishment as provided in s. 479.16(1), F.S., described above.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2: Amends s. 206.41, F.S., relating to state taxes imposed on motor fuel.

Section 3: Amends s. 316.515, F.S., relating to maximum width, height, length of implements of animal husbandry.

Section 4: Amends s. 479.11, F.S., providing for conforming provisions.

Section 5: Amends s. 570.07, F.S., relating to Department of Agriculture and Consumer Services; functions, powers, and duties for commercial feed and feedstuff.

Section 6: Amends s. 580.036, F.S., relating to the department's powers and duties relating to commercial feed and feedstuff.

Section 7: Amends s. 599.004, F.S., amending requirements for participation in the Florida Farm Winery Program.

Section 8: Reenacts s. 561.24, F.S., for the purpose of incorporating the amendment made by this act to s. 599.004, F.S.

Section 9: Amends s. 604.50, F.S., exempting farm signs from the Florida Building Code and any county or municipal code or fee; providing a definition for the term "farm sign;" and, providing that farm signs on public roads must meet certain criteria.

Section 10: Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments Section.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 20, 2012, the Revenue Estimating Conference adopted an estimate of the fiscal impact as a result of amending s. 163.3162, F.S., replacing the word "county" with "governmental entity."

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Cities	(\$.9 million)	(\$1 million)	(\$1 million)	(\$1.1 million)
Total	(\$.9 million)	(\$1 million)	\$1 million)	\$1.1 million)

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities. The bill expands the opportunity for agricultural producers to participate in the Florida Farm Winery program.

D. FISCAL COMMENTS:

The Department of Revenue has determined that pursuant to s. 206.41(4), F.S., citrus harvesting equipment and citrus fruit loaders fall under the existing definition of farm equipment and already qualify for the motor fuel tax refund.

The Department of Transportation expects no fiscal impact as a result of including citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, as authorized to transport citrus or other perishable farm products.

The Department of Agriculture may see an increase in revenues from additional participants in the Florida Farm Winery program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(b), Art. VII of the State Constitution may apply because the bill may reduce the authority that cities have to raise revenues in the aggregate, as such authority existed on February 1, 1989. The bill prohibits a city from imposing an assessment or fee for stormwater management on certain lands. The terms of the mandates provision of the constitution specifically apply to legislation affecting counties and municipalities

Section 18(d), Art. VII of the State Constitution, provides an exemption for laws that have an insignificant fiscal impact. The Revenue Estimating Conference has interpreted "insignificant fiscal impact," in the context of s. 18(d), Art. VII, to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents, or \$1.9 million. The revenue loss

to cities is estimated to be \$.9 million for Fiscal Year 2012-13 up to \$1.1 million for Fiscal Year 2015-16; therefore, the exemption applies.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed section 6 of the bill, which made it a first degree misdemeanor for a person to knowingly enter upon any nonpublic area of a farm and, without prior written consent of the farm's owner or the owner's authorized representative, operate the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On February 22, 2012, the State Affairs Committee adopted a strike-all amendment and an amendment to the strike-all amendment and reported the bill favorably as a committee substitute. The differences between the bill and the strike-all amendment are:

- The amendment revises the definition of "governmental entity" to make it clear the term does not include a water control district established under Chapter 298, F.S., or a special district created by special act for water management purposes.
- The amendment clarifies that the poultry and livestock that ingest the feedstuff must be safe for human consumption rather than the feedstuff being safe for human consumption.
- The amendment includes a provision reducing the acreage required for a winery to qualify as a certified Florida Farm Winery and provides that certification applies to wines made from vegetables as well as fruits.
- The amendment includes a provision allowing farm signs to be placed on public roads as long as they meet certain criteria. The amendment also includes a definition for "farm sign."

The amendment to the amendment is a conforming amendment that divides subsection (5) of section 479.11, F.S., into paragraphs (a) and (b). This is done to clarify the criteria that apply to farm signs on public roads.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.