

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1197 Agriculture
SPONSOR(S): State Affairs Committee; Horner
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Duncan	Hoagland
3) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Lolley	Massengale
4) State Affairs Committee	16 Y, 0 N, As CS	Kaiser	Hamby

SUMMARY ANALYSIS

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

- Florida apiary inspectors certify movement of honey bee colonies throughout the state and nation. These colonies are monitored for diseases, honey bee pests and unwanted species. The Department of Agriculture and Consumer Services (department) has a comprehensive state program (e.g., numbers of inspectors and traps) to prevent the accidental introduction of the unwanted Africanized honey bee. Current law provides the department specific powers to oversee apiaries, honeybee operations, and honeybee products. The bill provides the department with the exclusive authority to regulate beekeeping, apiaries, and apiary locations and provides that an apiary may be located on land classified as agricultural under s. 193.461, F.S., or on land that is integral to a beekeeping operation. The bill also provides that the department must consult with local governments and other affected stakeholders prior to adopting rules relating to beekeeping.
- 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. 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.
- Under the Florida Right to Farm Act (act), the Legislature has stated that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act also provides that a local government cannot adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land where such activity is regulated through implemented best management practices or interim measures developed by the department, the Department of Environmental Protection, or the water management districts and adopted under chapter 120, F.S., as part of a statewide or regional program. The bill amends the definition of "farm," "farm operation," and "farm product" to include land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the act.

The bill does not appear to have a fiscal impact on state government. The fiscal impact on local government is expected to be insignificant. For more information, see Fiscal Analysis & Economic Impact Statement.

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

STORAGE NAME: h1197g.SAC

DATE: 2/10/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beekeeping, Apiaries, and Apiary Locations

Present Situation

Apiary inspection plays a vital role in Florida agriculture as inspectors work to prevent introduction and establishment of honey bee pests and diseases. Florida's honey industry is consistently ranked among the top five in the nation with an annual worth of \$13 million. In addition, the Florida honey bee industry benefits the state's fruit and vegetable industry by providing an estimated \$20 million in increased production numbers created by managed pollination services that are available in no other way. There are more than 100 varieties of popular fruits and vegetables that use pollination to ensure fruitful crops.

Florida apiary inspectors certify movement of honey bee colonies throughout the state and nation.¹ These colonies are monitored for diseases, honey bee pests and unwanted species. The Department of Agriculture and Consumer Services (department) has a comprehensive state program (e.g., numbers of inspectors and traps) to prevent the accidental introduction of the unwanted Africanized honey bee.

Seventeen million pounds of honey are produced in Florida each year.²

Chapter 586, F.S., regulates honey production and beekeeping in Florida. Section 586.10, F.S., specifies that the department has the powers and duties to:

- Administer and enforce the provisions of this chapter;
- Promulgate rules necessary to the enforcement of this chapter;
- Promulgate rules relating to standard grades for honey and other honeybee products;
- Enter any public or private premise during regular business hours for the purpose of inspection, quarantine, destruction, or treatment of honeybees, used beekeeping equipment, unwanted races of honeybees, or regulated articles;
- Declare a honeybee pest or unwanted race of honeybees to be a nuisance;
- Declare a quarantine;
- Enter into cooperative arrangements with any person, municipality, county, or other department of this state or any agency, officer, or authority of other states or the United States Department of Agriculture, for inspection of honeybees, honeybee pests, or unwanted races of honeybees, and contribute a share of the expenses incurred under such arrangements.
- Carry on investigations of methods of control, eradication, and prevention of dissemination of honeybee pests or unwanted races of honeybees;
- Inspect or cause to be inspected all apiaries of the state to include: name of the apiary, name of the apiary owner, mailing address of the apiary owner, number of hives of the apiary owner, pest problems associated with the apiary, and brands used by beekeepers where applicable;
- Collect or accept arthropods, nematodes, fungi, bacteria, or other organisms for identification;
- Confiscate, destroy, or make use of abandoned beehives or beekeeping equipment;
- Require the identification of ownership of apiaries;
- Enter into a compliance agreement with any person engaged in purchasing, assembling, exchanging, processing, utilizing, treating, or moving beekeeping equipment or honeybees;
- Make and issue to beekeepers certificates of registration and inspection, following proper inspection and certification of their honeybee colonies;
- Revoke or suspend a certificate of inspection or the use of any certificate or permit issued by the department if a beekeeper or honeybee product processor violates this section;

¹ Rule 5B-54.006, F.A.C.

² <http://www.freshfromflorida.com/onestop/plt/apiaryinsp.html>

- Refuse the certification of any honeybees, honeybee products, or beekeeping equipment when it is determined that an unwanted race of honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department;
- Conduct, supervise, or cause the fumigation, destruction, or treatment of honeybees, including unwanted races of honeybees, honeybee products, and used beekeeping equipment or other articles infested or infected by honeybee pests or unwanted races of honeybees or so exposed that infection or infestation could exist; and
- May require the removal from this state of any honeybees or beekeeping equipment brought into the state in violation of this chapter.³

Section 586.02, F.S., provides various definitions related to beekeeping and honey production.

Effect of Proposed Changes

The bill amends s. 586.10, F.S., to specify that the department has the exclusive authority to regulate beekeeping, apiaries, and apiary locations. The bill also instructs the department to consult with local governments and affected stakeholders prior to adopting rules relating to beekeeping.

The bill provides that an apiary may be located on land classified as agricultural under s. 193.461, F.S., or on land that is integral to a beekeeping operation. Section 193.461, F.S., provides that lands that are used primarily for bona fide agricultural purposes must be classified agricultural. The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors are taken into consideration:

- The length of time the land has been so used.
- Whether the use has been continuous.
- The purchase price paid.
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
- Such other factors as may become applicable.

The bill also defines “apiculture” as “the raising, caring for, and breeding of honeybees.”

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

³ Section 586.10, F.S.

⁴ Section 604.50, F.S.

⁵ Section 823.14, F.S.

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 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.

Florida Right to Farm Act

Present Situation

The Florida Right to Farm Act⁶ states that the Legislature finds that agricultural production is a major contributor to the economy of the state and agricultural lands constitute unique and irreplaceable resources of statewide importance. The Legislature also finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of this act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act, in general, states that no farm operation that has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.

The act also specifies that a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the department, or water management districts and adopted under chapter 120 as part of a statewide or regional program.

The act defines “farm” to mean the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products. “Farm operation” is defined in the act to mean all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor. “Farm product” is also defined in the act to mean any plant, as defined in s. 581.011, F.S.,⁷ or animal useful to humans and includes, but is not limited to, any product derived therefrom.

Effect of Proposed Changes

The bill revises the Right to Farm Act by amending the definition of “farm” to include production of honeybee products in addition to farm and aquaculture products. The bill also amends the definition of “farm operation” to integrate production of honeybee products, which may include the placement and operation of an apiary. The definition of “farm product” is amended to include any insect useful to humans. These definitional changes brings land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the Right to Farm Act.

B. SECTION DIRECTORY:

Section 1: Amends s. 479.11, F.S., providing for conforming provisions.

Section 2: Amends s. 586.02, F.S., amending the definition of “apiary,” and providing a definition for “apiculture.”

⁶ Section 823.14, F.S.

⁷ Plant means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by rule.

Section 3: Creates s. 586.055, F.S., authorizing apiaries to be located on certain lands.

Section 4: Amends s. 586.10, F.S., providing the department with the exclusive authority to regulate beekeeping, apiaries, and apiary locations; and, instructing the department to consult with local governments and other affected stakeholders prior to adopting rules relating to beekeeping.

Section 5: 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, provides that farm signs on public roads must meet certain criteria.

Section 6: Amends s. 823.14, F.S., amending the definitions of farm, farm products, and farm operation to include honeybee products, the placement and operation of apiaries, and insects that are useful to humans within the purview of the Florida Right to Farm Act.

Sections 7, 8, 9, 10, 11, and 12: Reenacts ss. 163.3162(2)(b), 163.3163(3)(b), 193.461(5), 403.9337(4), 570.961(4), and 812.015(1)(g), F.S., relating to agricultural lands and practices, the Agricultural Land Acknowledgement Act, the classification and tax assessment of agricultural lands, an exemption from certain provisions related to the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, provisions related to the promotion of agritourism, and penalties for retail or farm theft, respectively, to incorporate amendments made by the act to s. 823.14, F.S.

Section 13: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

By amending s. 604.50, F.S., counties and municipalities that collect fees or fines associated with farm signs, may experience a decrease in revenues. Although the fiscal impact is indeterminate, it is likely to be insignificant.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By amending s. 604.50, F.S., agricultural producers may be exempt from paying fees or fines assessed by certain governmental entities for farm signs.

By amending s. 823.14, F.S., the Florida Right to Farm Act, the number of lawsuits for agricultural nuisances relating to honeybee production, products, and insects may be reduced.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18, Article VII of the State Constitution limits the power of the Legislature to enact laws impacting certain revenues and expenditures of municipalities and counties. The mandates provision appears to apply because the bill exempts farm signs from any county or municipal code or fee; however, this provision appears to have a fiscal impact of less than \$1.9 million statewide on counties and municipalities and is deemed an insignificant fiscal impact, and thus, an exemption for the purposes of Section 18, Article VII of the Constitution appears to apply.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2012, the State Affairs Committee adopted a strike-all amendment to HB 1197. The differences between HB 1197 and the strike-all amendment are, the amendment:

- Provides a definition for apiary.
- Instructs the department to consult with local governments and other affected stakeholders prior to adopting rules relating to beekeeping.
- Amends the definition of "farm sign" to relate "solely" to products, merchandise, or services produced, manufactured, or furnished on the farm.
- Provides that farm signs located 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), (5)(a), and (6)-(8), F.S.