

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 Committee on Community Affairs

BILL: CS/SB 1106

INTRODUCER: Agriculture Committee and Senator Hays

SUBJECT: Agritourism

DATE: March 20, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Akhavein</u> | <u>Halley</u> | <u>AG</u> | Fav/CS |
| 2. | <u>Anderson</u> | <u>Yeatman</u> | <u>CA</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1106 states that it is the intent of the Legislature to eliminate duplication of regulatory authority over agritourism. It prohibits a local government to adopt ordinances, regulations, rules, or policies that prohibit, restrict, regulate or otherwise limit an agritourism activity on land that has been classified as agricultural by a property appraiser. The bill clarifies the definition of “agritourism activity” and creates a new definition for “inherent risk of an agritourism activity.” It establishes a limitation on liability from inherit risks for the land owner, agritourism professional, and employees if a notice of risk is posted on the land, with exceptions. The bill provides the specific warning language that must be posted in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. Each agritourism contract with the participant must also include the warning language in clearly readable print. Finally, the bill denies use of the limited liability defense if the owner, agritourism professional, or employee fails to post the sign as required by this act or fails to place it in the contract.

This bill amends sections 570.96 and 570.961 of the Florida Statutes. This bill creates sections 570.963 and 570.964 of the Florida Statutes.

II. Present Situation:

Agritourism

Agritourism is the practice of attracting visitors and travelers to agricultural areas, generally for educational and recreational purposes. For many farmers, the only way to continue farming is to find ways to diversify and expand their incomes, either through new enterprises on the farm or off-farm employment. One diversification strategy some U.S. farmers are beginning to explore is the “cultivation” of tourists in addition to growing crops. Referred to as “agriturismo” in Italy, “sleeping in the straw” in Switzerland, “farmstays” in New Zealand, and “farm holidays” in England, agritourism is well established throughout Europe and in many other countries.¹

Agritourism has an extensive history in the United States. Farm-related recreation and tourism can be traced back to the late 1800s, when families visited farming relatives in an attempt to escape from the city’s summer heat. Visiting the country became even more popular with the widespread use of the automobile in the 1920s. Rural recreation gained interest again in the 1930s and 1940s by people seeking an escape from the stresses of the Great Depression and World War II. These demands for rural recreation led to widespread interest in horseback riding, farm petting zoos, and farm nostalgia during the 1960s and 1970s. Farm vacations, bed and breakfasts, and commercial farm tours were popularized in the 1980s and 1990s.²

Agritourism allows people who have little knowledge of agricultural lands to experience intrinsic agricultural practices and the culture of those lands. Agritourism can help people reconnect with agricultural practices that have changed with the rise of heavily-industrialized farming methods and can build relationships between the producer and consumer. This type of tourism could include farm tours or farm stays, fishing, hunting, festivals, historical recreations, workshops/educational activities, wildlife study, horseback riding, cannery tours, cooking classes, wine tastings, barn dances, and harvest-your-own activities. The use of these resources can have a positive effect on both the agricultural enterprise and the surrounding community. Not only does this tourism have the potential to add value to the operations themselves, but it also creates an awareness in people about the importance of agriculture.³

Under Florida’s Greenbelt Law, properties that are bona fide agricultural operations are taxed according to the “use” value of those operations, rather than the development value. The property appraiser of each county in Florida must classify every piece of land in their county as agricultural or non-agricultural in order to get the bona fide status. This is known as the land’s “Greenbelt” assessment.⁴ To make this determination, the appraiser must consider factors such as the length of time the land has been used for its current purpose, whether that use has been continuous, the price paid for the land, the size of the land in relation to its specific agricultural use, the effort made to care sufficiently and adequately for the land, whether the land is leased, and if so, the terms of the lease, and finally, any other factors that may become applicable.

¹ Curtis E. Beus, “Agritourism: Cultivating Tourists on the Farm,” (July 2008): 5.

² Considering an Agritainment Enterprise in Tennessee? (Agricultural Extension Service, The University of Tennessee, PB 1648).

³ Analysis of SB 2754, (2007).

⁴ Section 193.461, F.S.

When a piece of land is classified as agricultural/Greenbelt, it is given a property value based upon its agricultural use rather than the market value of the land. Such a classification provides the property with a lower property tax assessment. The type of agricultural use also impacts the assessment within the Greenbelt classification. This means that land used to grow pine trees may receive a different value than land used to produce fruit, so different types of agriculture receive different property value levels.

The 2007 Legislature passed House Bill 1427 which authorized the Department of Agriculture and Consumer Services to assist agritourism operators with marketing and permitted the conducting of agritourism activity on a bona fide farm or on agricultural lands classified as such pursuant to s. 193.461, F.S. It also specified that the practice of agritourism shall not limit, restrict, or divest the land of that classification.⁵

Agritourism in Other States

Several states have enacted laws that support farmers involved in agritourism. For instance, Louisiana passed a law in 2008 that affords limited liability protection to agritourism operators. Oklahoma currently has a bill before the Legislature cited as the “Oklahoma Agritourism Activities Liability Limitations Act.” Agritourism operators in Florida do not have a statutory defense for injuries occurring from inherent risks. These risks involve dangers associated with natural conditions of premises, natural responses of animals, and ordinary dangers of structures and equipment.

The 2011 General Assembly in North Carolina passed legislation allowing “Bona Fide Farm Operators” located within the extraterritorial jurisdiction to be exempt from zoning regulation by city governments.⁶ County governments were already unable to zone Bona Fide Farm Operators. At this time, Florida law only promotes the use of land for agritourism activities. It does not provide for a preemption of local governments, an affirmative defense for agritourism activities, or a specific limitation on liability for agritourism activities.

Legal Duties for Landowners Towards Persons on Their Land

In a negligence action, to be entitled to certain remedies, a plaintiff must prove:

- a lawful duty exists;
- the duty was breached; and
- damages were suffered as a result of the breach.

Current tort law in Florida related to landowners’ duty to persons on their land is governed by the status of the person and the duty of care owed by the landowner to the person.⁷ There are two basic categories of persons on land, invitees and trespassers.

⁵ Section 570.962, F.S.

⁶ S.L. 2011-34 and S.L. 2011-363 (N.C. Sess. Laws).

⁷ Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).

Generally, an invitee is a person who was invited to enter the land.⁸ Section 768.075(3)(a)1., F.S., defines “invitation” to mean, “the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs.” Landowners owe certain duties to invitees and can be sued in tort if an injury is caused by a breach of a duty. The duties owed to invitees are:

- to use reasonable care to keep and maintain property in reasonably safe condition; and
- to warn of concealed dangers that are known or should be known to the landowner and that the invitee cannot discover through the exercise of due care.⁹

A trespasser¹⁰ can either be a “discovered trespasser” or an “undiscovered trespasser.” A discovered trespasser is a person who did not have an express or implied invitation and whose actual presence was discovered in the preceding 24 hours before an injury occurred.¹¹ An undiscovered trespasser is a person whose actual presence was not discovered in the preceding 24 hours before an injury occurred.¹² “An owner cannot, however, be held liable for a negligent condition as to an undiscovered trespasser who chooses to come upon his property without his knowledge.”¹³ To avoid liability to an undiscovered trespasser, a property owner must not engage in intentional misconduct that causes the injury.¹⁴ The duty owed to a discovered trespasser is broader and includes:

- refraining from gross negligence or intentional misconduct that causes the injury; and
- warning the trespasser of hidden dangerous conditions.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 570.96, F.S., to provide that it is the Legislature’s intent to eliminate duplication of regulatory authority over agritourism. It prohibits a local government to adopt ordinances, regulations, rules, or policies that prohibit, restrict, regulate or otherwise limit an agritourism activity on land that has been classified as agricultural by a property appraiser. However, it does not prohibit a local government to address an emergency.

Section 2 amends s. 570.961, F.S., to clarify the definition of “agritourism activity” and create a new definition for “inherent risk of an agritourism activity.”

Section 3 creates s. 570.963, F.S., to establish limitation on liability for the land owner, agritourism professional and their employee if a notice of risk is posted on the land. With certain exceptions, a person may not maintain an action against or recover from a land owner,

⁸ *Id.* (citing *Wood v. Camp*, 284 So. 2d 691 (Fla. 1973) which expand[s] the definition of invitee to include social guests which the court referred to as ‘licensees by invitation.’ After *Wood*, invitees are defined as those persons who come on the property at the invitation of the landowner.”).

⁹ Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).

¹⁰ “A trespasser is one who enters the owners (sic) property for his own convenience without right or authority.” Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:4 Trespassers (2011-12 ed.).

¹¹ Section 768.075 (3)(a)2., F.S.

¹² Section 768.075(3)(a)3., F.S.

¹³ Sections 768.075(3)(a) and (b), F.S., *See also Wood*, 284 So. 2d at 693-694.

¹⁴ *Id.*

¹⁵ *Id.* *See also, Florida East Coast Ry. Co. v. Gonsiorowski*, 418 So. 2d 382, 384 (Fla. 4th DCA 1982).

agritourism professional or their employee for the injury or death of, or damage or loss to, an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages, it requires a pleading of the affirmative defense of assumption of risk by the owner, agritourism professional, or employee.

The criteria above do not prevent or limit the liability of a land owner, agritourism professional or their employee if he or she:

- Commits an act that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
- Intentionally injures the participant.

Section 4 creates s. 570.964, F.S., to provide the specific warning language that must be posted in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. Each agritourism contract with the participant must also include the warning language in clearly readable print. The bill denies use of the limited liability defense if the owner, agritourism professional, or employee fails to post the sign as required by this act or fails to place it in the contract.

Section 5 provides that this act shall take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 bill lessens the regulations on agricultural producers who engage in agritourism activities.

C. Government Sector Impact:

Local government impact by the provisions of the bill is indeterminate.

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 on March 11, 2013:

It emphasizes that immunity does not apply when the land owner, the agritourism professional, or an employee:

- negligently injures the participant;
- knows of a dangerous condition that causes injury because the participant was not alerted; or
- intentionally injures the participant.

B. Amendments:

None.