

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: SB 1776

INTRODUCER: Senator Bradley

SUBJECT: Vegetable Gardens

DATE: February 5, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Present | Yeatman | CA | Pre-meeting |
| 2. | | | RC | |

I. Summary:

SB 1776 prohibits a county, municipality, or other political subdivision of the state from regulating vegetable gardens on residential properties. Additionally, any such local ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable.

However, local governments may still adopt a local ordinance or regulation of a general nature which does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

II. Present Situation:

Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state.

Article I, section 2 of the Florida Constitution’s Declaration of Rights provides that “All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, *and to acquire, possess and protect property...*”

Article I, section 23 of the Florida Constitution’s Right to Privacy provides that “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life...” The Florida Constitution’s right to privacy is perceived to provide greater protection than the United States Constitution.¹

¹ Overton and Giddings, *The Right to Privacy in Florida in the Age of Technology and the Twenty-First Century: A Need for Protection from Private and Commercial Intrusion*, Florida State University Law Review, Volume 25, Issue 1, Article 3, (1997), available at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1394&context=lr>.

Village of Miami Shores Court Case

Residents of the Village of Miami Shores recently brought an action challenging the constitutionality of a zoning ordinance that prohibited the residents from growing vegetables in their front yard.² Violators of the ordinance faced fines of \$50 per day. The residents claimed the ordinance violated their constitutional rights to acquire, possess, and protect property; and their right to privacy. In its opinion, the Court held that even constitutionally protected property rights are not absolute and are subject to the fair exercise of the State's powers including the power to promote the general welfare of the people through regulation. As a result, using a rational basis standard of review,³ the Court found that the ordinance was rationally related to the Village code's design standards and landscaping regulations. The ordinance was upheld, and the prohibition remains in place.

III. Effect of Proposed Changes:

The bill provides that except as otherwise provided by law, a county, municipality, or other political subdivision may not regulate vegetable gardens on residential properties. Additionally, any such ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

However, the section does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

The bill also provides that it is the Legislature's intent to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

² *Ricketts v. Village of Miami Shores*, 2017 WL 4943772 (Fla. 3d DCA 2017).

³ The rational basis standard of review is a deferential standard that requires the reviewing court to uphold the enactment if it is "fairly debatable" whether the purpose of the law is legitimate and whether the methods adopted in the law serve that legitimate purpose. *Membreno & Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 S0. 3d 13, 25 (Fla. 3d DCA 2016).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Occupants of residential properties will be able to cultivate a vegetable garden without government intrusion.

C. Government Sector Impact:

Counties, municipalities, and other political subdivisions of the state are prohibited from regulating vegetable gardens on residential properties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 604.71 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.