

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1013 Urban Agriculture

**SPONSOR(S):** Environment, Agriculture & Flooding Subcommittee, Rayner and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee	20 Y, 0 N	Melkun	Williamson

### SUMMARY ANALYSIS

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises. This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

The bill defines “urban agriculture” to mean any new or existing noncommercial agricultural uses on land that is within a dense urban land area, not classified as agricultural, not zoned as agricultural as its principal use, and designated by a municipality for inclusion in an urban agricultural pilot project that has been approved by the Department of Agriculture and Consumer Services (DACS).

The bill authorizes DACS to approve five urban agricultural pilot projects that meet certain requirements adopted by DACS rule. The rules adopted by DACS must require, at a minimum, that a municipal applicant has a population of 250,000 or more and submits to DACS a proposal that includes certain information. A pilot project may be approved for an initial three-year period and renewed for additional three-year periods by mutual agreement between DACS and the municipality. At the end of the first three-year period, the bill authorizes DACS to increase the number of pilot projects from five to 10.

The bill specifies that urban agriculture is subject to applicable municipal regulations if:

- The urban agriculture activities occur on land included by a municipality in a pilot project approved by DACS.
- The municipality duly enacts local regulations applicable to urban agriculture.
- Before the reenactment of local regulations applicable to urban agriculture, the municipality designates existing farm operations within its jurisdiction as legally nonconforming.

The bill specifies that notwithstanding any other law, ordinance, rule, or policy to the contrary, all power-drawn, power-driven, or self-propelled equipment used to transport farm products may be stored, maintained, or repaired by the owner within the boundaries of the owner’s farm and at least 50 feet away from any public road. In addition, the bill specifies that this provision, along with the current law provision that allows for such storage for equipment used on a farm, does not apply to farm equipment used in urban agriculture.

The bill specifies that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

The bill has no fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.<sup>1</sup> This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponic facilities (e.g., growing fish and plants together in an integrated system).<sup>2</sup> Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.<sup>3</sup>

The forms of urban agriculture can be categorized as either commercial or community-based.<sup>4</sup> Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.<sup>5</sup> The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables.<sup>6</sup> Profitability is not necessarily the goal of community-based urban agriculture;<sup>7</sup> instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.<sup>8</sup>

##### Right to Farm Laws

In the 1970s, states began to identify the potential for conflict between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in the filing of nuisance<sup>9</sup> lawsuits once the new

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<sup>1</sup> Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited March 23, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban Agriculture: Growing Healthy, Sustainable Places* (2011), available at [https://planning-org-uploaded-media.s3.amazonaws.com/publication/book\\_paperback/PAS-Report-563.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/publication/book_paperback/PAS-Report-563.pdf) (last visited Mar. 23, 2021).

<sup>5</sup> Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), available at [https://smallfarms.cornell.edu/wp-content/uploads/2019/12/Promise-of-Urban-Ag\\_Full\\_102919-1.pdf](https://smallfarms.cornell.edu/wp-content/uploads/2019/12/Promise-of-Urban-Ag_Full_102919-1.pdf) (last visited Mar. 23, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban Agriculture: Growing Healthy, Sustainable Places* (2011), available at [https://planning-org-uploaded-media.s3.amazonaws.com/publication/book\\_paperback/PAS-Report-563.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/publication/book_paperback/PAS-Report-563.pdf) (last visited Mar. 23, 2021).

<sup>8</sup> Vitiello, D. and Wolf-Powers, L, *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523, available at [https://www.researchgate.net/publication/275380492\\_Growing\\_food\\_to\\_grow\\_cities\\_The\\_potential\\_of\\_agriculture\\_foreconomic\\_and\\_community\\_development\\_in\\_the\\_urban\\_United\\_States](https://www.researchgate.net/publication/275380492_Growing_food_to_grow_cities_The_potential_of_agriculture_foreconomic_and_community_development_in_the_urban_United_States) (last visited Mar. 23, 2021).

<sup>9</sup> A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person's use or enjoyment of their property. A private nuisance affects a person's private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.

BLACK'S LAW DICTIONARY (11th ed. 2019).

neighbors experienced the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other stimuli.<sup>10</sup>

To protect farms and agricultural operations from the encroaching sprawl, all 50 states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, which protect agricultural production against certain nuisance lawsuits, do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. Specifically, these laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”<sup>11</sup> The Florida Right to Farm Act was enacted in 1979.<sup>12</sup>

The Florida Right to Farm Act<sup>13</sup> protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices. The Act contains a section of legislative findings and purposes that establish why reasonable agricultural activities conducted on farmland should be protected from nuisance lawsuits that can force the premature removal of farmland from agricultural use. The language notes, in part, that:<sup>14</sup>

- Agricultural production makes major contributions to the state economy;
- Agricultural lands cannot be replaced;
- Agricultural activities increase tourism; and
- Agriculture furthers the economic self-sufficiency of the people of the state and should be protected.

The Florida Right to Farm Act states that a farm operation cannot be classified as a public or private nuisance if the farm has been in operation for one year or more since its established date of operation; was not a nuisance when it was established; and conforms to generally accepted agricultural and management practices.<sup>15</sup> However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies.
- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases that are harmful to human or animal life.<sup>16</sup>

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change in ownership; in the type of farm product that is produced; in conditions in or around the locality of the farm; or made in compliance with best management practices adopted by local, state, or federal agencies.<sup>17</sup>

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business on March 15, 1982.<sup>18</sup>

Additionally, in an effort to eliminate duplication of regulatory authority over farm operations, local governments are prohibited from adopting ordinances or similar policies that prohibit or limit an activity

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<sup>10</sup> Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* 11 No. 1 ABA Agric. Mgmt. Committee Newsl. 8 (April, 2007).

<sup>11</sup> *Id.*

<sup>12</sup> Chapter 79-61, ss. 1-2, Laws of Fla.

<sup>13</sup> Section 823.14, F.S.

<sup>14</sup> Section 823.14(2), F.S.

<sup>15</sup> Section 823.14(4)(a), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 823.14(4)(b), F.S.

<sup>18</sup> Section 823.14(5), F.S.

of a bona fide farm operation on land that is classified as agricultural land where the activity is regulated through implemented best management practices or certain interim measures.<sup>19</sup>

### The Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>20</sup>

The Florida Building Commission (Commission), within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.

### **Effect of the Bill**

The bill defines “urban agriculture” to mean any new or existing noncommercial agricultural uses on land that is within a dense urban land area, not classified as agricultural, not zoned as agricultural as its principal use, and designated by a municipality for inclusion in an urban agricultural pilot project that has been approved by the Department of Agriculture and Consumer Services (DACS). The bill specifies that the term does not include vegetable gardens for personal consumption on residential properties.

The bill authorizes DACS to approve five urban agricultural pilot projects that meet certain requirements adopted by DACS rule. The rules adopted by DACS must require, at a minimum, that a municipal applicant:

- Has a population of 250,000 or more.
- Submits to DACS a proposal that includes a narrative description of the proposed pilot project, including the project location, farm products to be cultivated, community involvement, anticipated outcomes, nutrition and water use, fertilization management, and any other requirements specified by DACS rules.

The bill requires a pilot project to be approved for an initial three-year period and authorizes the project to be renewed for additional three-year periods by mutual agreement between DACS and the municipality. At the end of the first three-year period, the bill authorizes DACS to increase the number of pilot projects from five to 10.

The bill requires a municipality with an approved pilot project to submit a report providing a narrative explanation of the outcomes and impact of the pilot project to DACS by January 1 for each year of the pilot project. The bill further requires DACS to submit a report on the outcomes and impacts of the pilot projects to the President of the Senate and Speaker of the House of Representatives.

The bill specifies that notwithstanding any law to the contrary, urban agriculture is subject to applicable municipal regulations if:

- The urban agriculture activities occur on land included by a municipality in a pilot project approved by DACS.
- The municipality duly enacts local regulations applicable to urban agriculture.
- Before the reenactment of local regulations applicable to urban agriculture, the municipality designates existing farm operations within its jurisdiction as legally nonconforming.

The bill specifies that notwithstanding any other law, ordinance, rule, or policy to the contrary, all power-drawn, power-driven, or self-propelled equipment used to transport farm products may be stored, maintained, or repaired by the owner within the boundaries of the owner’s farm and at least 50

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<sup>19</sup> Section 823.14(6), F.S.

<sup>20</sup> See s. 553.72(1), F.S.

feet away from any public road. In addition, the bill specifies that this provision, along with the current law provision that allows for such storage for equipment used on a farm, does not apply to farm equipment used in urban agriculture.

The bill specifies that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 604.40, F.S., to provide an exception from certain requirements for farm equipment used for urban agriculture.

Section 2. Amends s. 604.50, F.S., to provide an exception from certain requirements for certain buildings, fences, and signs used for urban agriculture.

Section 3. Creates s. 604.73, F.S., to create the "Urban Agriculture Pilot Project Act."

Section 4. Provides an effective date of July 1, 2021.

**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:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires DACS to adopt rules regarding the applications for urban agriculture pilot projects.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Revised the definition of “urban agriculture”;
- Authorized DACS to approve five urban agricultural pilot projects that meet certain requirements;
- Required a pilot project to be approved for an initial three-year period that can be extended by three-year periods under certain conditions; and
- Required a municipality with an approved pilot project to submit a report to DACS by January 1 for each year of the pilot project.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.