

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1343 Agricultural Lands

SPONSOR(S): Infrastructure Strategies Committee, Ways & Means Committee, Agriculture, Conservation & Resiliency Subcommittee, Tuck, Truenow, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	17 Y, 0 N, As CS	Gawin	Moore
2) Ways & Means Committee	24 Y, 0 N, As CS	Berg	Aldridge
3) Infrastructure Strategies Committee	19 Y, 0 N, As CS	Gawin	Harrington

SUMMARY ANALYSIS

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. Agricultural land is one example of property that is assessed based on its current use rather than its fair market value. A property appraiser classifies all land as either agricultural or nonagricultural, and agricultural lands are those used primarily for bona fide agricultural purposes such as horticulture, viticulture, forestry, and farming. Counties are specifically prohibited from levying a special assessment for the provision of fire protection services on lands classified as agricultural that meet certain requirements.

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, or sign regulations or any other regulations controlling the development of land.

Annually, an estimated 150,000 to 200,000 migrant and seasonal farmworkers travel to work in Florida. The migrant labor camp program within the Department of Health currently issues over 700 permits in 33 counties ensuring that 34,000 migrant and seasonal farmworkers and families live in housing that meets or exceeds standards set by law.

Notwithstanding any other provision of law, the bill prohibits a county from levying any special assessment on lands classified as agricultural unless the revenue from the assessment against the property is pledged for debt service. The bill specifies such provisions do not apply to nonagricultural structures, including residential and nonresidential structures and their curtilage.

The bill specifies that the construction or installation of housing for agricultural employees is authorized on land zoned for agricultural use and operated as a bona fide farm.

The bill prohibits a county or municipality from requiring the removal or relinquishment of an agricultural classification for land that is subject to a contract for sale that requires a development permit as a condition precedent of sale if the landowner notifies the county or municipality that the reclassification is requested as a condition precedent for a pending sale of the land. The agricultural classification for the land may not be removed or relinquished based solely on the issuance of the development permit until the landowner notifies the county or municipality that the contract has closed and the property has been conveyed to the contract purchaser.

The Revenue Estimating Conference (REC) has not evaluated the bill for potential revenue impacts.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

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

STORAGE NAME: h1343d.ISC

DATE: 4/19/2023

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Ad Valorem Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The Florida Constitution prohibits the state from levying ad valorem taxes,⁴ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often results in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Agricultural Lands

Agricultural land is one example of property that is assessed based on its current use rather than its fair market value.¹¹ A property appraiser classifies all land as either agricultural or nonagricultural. Agricultural lands are those used primarily for bona fide agricultural purposes such as horticulture, viticulture, forestry, and farming.¹²

Only the area of the land used for agricultural purposes benefits from the agricultural classification. Maintaining a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification.¹³ When agricultural property contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately.¹⁴ If the residence and curtilage is homestead property, the real property that can qualify for the homestead benefit can also include contiguous property assessed as agricultural land.¹⁵ There are certain

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ Art. VII, s. 1(a), Fla. Const.

⁵ *See* Art. VII, s. 4, Fla. Const.

⁶ Section 193.011(2), F.S.

⁷ Art. VII, s. 4(a), Fla. Const.

⁸ Art. VII, s. 4(b), Fla. Const.

⁹ Art. VII, s. 4(e), Fla. Const.

¹⁰ Art. VII, s. 4(j), Fla. Const.

¹¹ Art. VII, s. 4(a), Fla. Const.

¹² Section 193.461, F.S.

¹³ Section 193.461(3)(c), F.S.

¹⁴ Section 193.461(3)(d), F.S.

¹⁵ Section 196.031(5), F.S.

protections of agricultural classifications when land is temporarily not being used for agriculture due to a natural disaster or in compliance with certain state agriculture programs.¹⁶

Agricultural lands are taxed at a value based on their agricultural use, which requires a property appraiser to use a different analysis to value the land than that used to determine the just value of the land. Additionally, certain structures that are attached physically to the land are considered to be a part of the average yields per acre and have no separately assessable contributory (taxable) value.¹⁷ Lands classified as agricultural also enjoy certain benefits and protections, such as a preemption on local government restrictions of farming on those lands¹⁸ and limits on nuisance complaints related to farming activities.¹⁹

Special Assessments

Local governments are authorized by law to levy a variety of special assessments to fund capital improvements and municipal services. These can include fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities.²⁰ Special assessments must generally be levied on property that receives a benefit from the improvement or service the assessment is funding, and must be apportioned fairly and reasonably among the parcels benefitting from the benefit.²¹ The apportionment can be based on the front or square footage of each parcel of property, or an alternative method that applies the assessment proportionally to similar parcels of land.²²

Fire Protection Assessments

Counties are specifically prohibited from levying a special assessment for the provision of fire protection services on lands classified as agricultural lands, unless the land contains either a residential building, or a nonresidential farm building, other than an agricultural pole barn,²³ with a just value in excess of \$10,000.²⁴ Such a special assessment must be based solely on the special benefit accruing to the portion of the agricultural land containing the building.²⁵

Comprehensive Plans and Land Use Regulation

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development. A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.

The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.²⁶ The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.²⁷

¹⁶ Section 193.461(7), F.S.

¹⁷ Section 193.461(6)(c), F.S.

¹⁸ Section 163.3162, F.S.

¹⁹ See s. 823.14, F.S.

²⁰ See, e.g., ss. 170.201, 125.271, 153.05, 153.73, 163.514, 190.021, and 191.009, F.S.

²¹ See, "Special Assessments," *2022 Local Government Financial Information Handbook*, p. 15, Florida Office of Economic and Demographic Research, available at <http://edr.state.fl.us/Content/local-government/reports/lgh22.pdf> (last visited April 5, 2023)

²² Section 170.201, F.S.

²³ "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Section 125.01(1)(r), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 163.3177(6)(a), F.S.

²⁷ Section 163.3177(6)(f), F.S.

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, or sign regulations or any other regulations controlling the development of land.²⁸

Zoning

Zoning maps and zoning districts are adopted by a local government for developments within each land use category or sub-category. While land uses are general in nature, one or more zoning districts may apply within each land use designation.²⁹ Common regulations on buildings within the zoning map districts include density,³⁰ height and bulk of buildings, setbacks, and parking requirements.³¹ Zoning regulations will also include acceptable uses of property for other categories of land, such as agricultural or industrial.

If a landowner believes that a proposed development may have merit but it does not meet the requirements of a zoning map in a jurisdiction, the landowner can seek a rezoning through a rezoning application which is reviewed by the local government and voted on by the governing body.³² If a property has unique circumstances or small nonconformities but otherwise meets zoning regulations, local governments may ease restrictions on certain regulations such as building size or setback through an application for a variance.³³ However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

Migrant Farmworker Housing

The federal government authorizes farmers to hire seasonal or temporary workers from foreign countries through the H-2A visa program.³⁴ The H-2A temporary agricultural workers program helps employers who anticipate a lack of available domestic workers to bring foreign workers to the United States (U.S.) to perform temporary or seasonal agricultural work including, but not limited to, planting, cultivating, or harvesting labor.³⁵ Farmers complete an H-2A visa petition with the U.S. Citizenship and Immigration Services and workers apply for the H-2A visa with the U.S. Department of State.³⁶ Farmers must provide no cost housing for H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.³⁷

Annually, an estimated 150,000 to 200,000 migrant and seasonal farmworkers travel to work in Florida.³⁸ The migrant labor camp program within the Department of Health (DOH) currently issues over 700 permits in 33 counties ensuring that 34,000 migrant and seasonal farmworkers and families

²⁸ See ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.

²⁹ Indian River County, *General Zoning Questions*, available at <https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1> (last visited Mar. 20, 2023).

³⁰ "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. See s. 163.3164(12), F.S.

³¹ Indian River County, *General Zoning Questions*, available at <https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1> (last visited Mar. 21, 2023).

³² City of Tallahassee, *Application for Rezoning Review*, available at <https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Mar. 21, 2023).

³³ City of Tallahassee, *Variance and Appeals*, available at https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf (last visited Mar. 21, 2023); Seminole County, *Variance Processes*, available at <https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.shtml> (last visited Mar. 21, 2023).

³⁴ United States Department of Agriculture (USDA), *H-2A Program*, <https://www.farmers.gov/working-with-us/h2a-visa-program> (last visited Mar. 21, 2023).

³⁵ *Id.*

³⁶ *Id.*

³⁷ 20 C.F.R. s. 655.122(d).

³⁸ DOH, *Migrant Farmworker Housing*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/index.html> (last visited Mar. 21, 2023).

live in housing that meets or exceeds standards set by law.³⁹ Migrant labor camps⁴⁰ and residential migrant housing⁴¹ need a permit prior to opening.⁴²

Employment Eligibility

Private employers in the state must, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility.⁴³ An employer can verify this through the E-Verify system⁴⁴ or by requiring the person to provide the same documentation that is required by the U.S. Immigration Services on its Employment Eligibility Verification form.⁴⁵

Effect of the Bill

Notwithstanding any other provision of law, the bill prohibits a county from levying any special assessment on lands classified as agricultural, including nonresidential agricultural structures, unless the revenue from the assessment is pledged for debt service and is needed to make required payment on that debt. The bill specifies that this prohibition does not apply to nonagricultural structures, including residential and nonresidential structures and their curtilage.

The bill defines "agricultural employee" to mean a person who produces a farm product; is seasonally or annually employed in agricultural production; is lawfully present in the U.S.; is eligible to work at the time of employment and remains so throughout the duration of that employment; and has been verified by the employer as eligible to work in the U.S.

The bill specifies that the construction or installation of housing for agricultural employees is authorized on land zoned for agricultural use and operated as a bona fide farm. Such construction or installation of housing must be located on a parcel of land no less than 10 acres in size; may not be located within 500 feet of the property line; may not exceed 7,500 square feet per parcel of land; must meet all local and state building standards for securing a residential certificate of occupancy; and does not require approval by ordinance or resolution of the governmental entity where the land is located.

The bill specifies that if agricultural operations are discontinued on the property for a minimum of three years and the agricultural land classification of the property is no longer valid, then the agricultural employee housing is no longer eligible for residential use unless and until approved by the local jurisdiction under its zoning and land use regulations for the intended non-agricultural use.

The bill prohibits a county or municipality from requiring the removal or relinquishment of an agricultural classification for land that is subject to a contract for sale that requires a development permit⁴⁶ as a condition precedent of sale if the landowner notifies the county or municipality in writing at the time of application for the development permit that the reclassification is requested as a condition precedent for a pending sale of land. The agricultural classification for the land may not be removed or relinquished based solely on the issuance of the development permit until such time that the landowner provides

³⁹ *Id.*; For migrant housing guidelines, see DOH, *Basic Guidelines*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/migrant-farm-workers-guidelines.html> (last visited Mar. 21, 2023).

⁴⁰ "Migrant labor camp" means one or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family. Section 381.008(5), F.S.

⁴¹ "Residential migrant housing" means a building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, control, and the land appertaining thereto that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers. The term does not include housing furnished as an incident of employment. Section 381.008(8), F.S.

⁴² Section 381.0083, F.S.

⁴³ Section 448.095(3)(a), F.S.

⁴⁴ "E-Verify system" means an internet-based system operated by the U.S. Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees. Section 448.095(1)(e), F.S.

⁴⁵ Section 448.095(3)(b), F.S.

⁴⁶ "Development permit" means any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. Section 163.3164(16), F.S.

written notice to the county or municipality that the contract has closed and the property has been conveyed to the contract purchaser.

B. SECTION DIRECTORY:

- Section 1. Amends s. 125.01, F.S., to exempt agricultural property from all special assessments unless certain conditions are met.
- Section 2. Amends s. 163.3162, F.S., to retain agricultural classification and allow agricultural land to be used for agricultural employee housing in specified circumstances.
- Section 3. Amends s. 193.461, F.S., to retain classification and assessment of agricultural lands pending certain types of sale of such property.
- Section 4. Provides an effective date of July 1, 2023.

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:
The Revenue Estimating Conference (REC) has not evaluated the bill for potential revenue impacts.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural landowners may experience a positive fiscal impact associated with the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because the bill eliminates the ability of counties to levy special assessments on all lands classified as agricultural, unless the land is subject to an assessment which is pledged for debt service. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Agriculture, Conservation & Resiliency Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Prohibited a county from levying any special assessments on agricultural lands;
- Revised requirements related to migrant farmworker housing authorized on agricultural lands;
- Prohibited a local government from requiring the removal of a property's agricultural classification under certain circumstances;
- Removed a provision from the bill that provided a tax credit for certain costs related to migrant farmworker housing; and
- Removed a provision from the bill that required the Department of Environmental Protection to permit and inspect toilet facilities on agricultural lands.

On April 12, 2023, the Ways & Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that special assessments may be levied against agricultural land only if the revenue from the assessment is pledged for debt service and that revenue is needed to make payments for debt service.

On April 17, 2023, the Infrastructure Strategies Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified the structures and areas on which a county may levy special assessments;
- Defined agricultural employee;
- Specified that agricultural employee housing must be located on a parcel of land no less than 10 acres in size and may not be located within 500 feet of the property line; and
- Specified that an agricultural classification for land may not be removed or relinquished based solely on the issuance of a development permit until the landowner has provided written notice that the contract has closed.

This analysis is drafted to the committee substitute as approved by the Infrastructure Strategies Committee.