

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1051 Housing For Agricultural Workers

**SPONSOR(S):** Infrastructure Strategies Committee, Agriculture, Conservation & Resiliency Subcommittee, Tuck, Alvarez, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	18 Y, 0 N, As CS	Gawin	Moore
2) State Affairs Committee	18 Y, 0 N	Burgess	Williamson
3) Infrastructure Strategies Committee	21 Y, 0 N, As CS	Gawin	Harrington

### SUMMARY ANALYSIS

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 (DOH) currently issues over 700 permits in 33 counties, ensuring that 34,000 migrant and seasonal farmworkers and their families live in housing that meets or exceeds standards set by law. This housing is regulated by local governments, DOH, and federal regulations.

The bill prohibits a governmental entity from adopting or enforcing any legislation to inhibit the construction or installation of housing for legally verified agricultural workers on land classified as agricultural which is operated as a bona fide farm. However, a local government may adopt land use regulations that are less restrictive than those established in the bill. The bill establishes criteria for the construction or installation of housing units for agricultural workers on parcels of land classified as agricultural.

The bill requires any local ordinance adopted pursuant to the requirements for agricultural worker housing created in the bill to comply with all state and federal regulations for migrant farmworker housing, as applicable, including rules adopted by DOH and federal regulations under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) or the H-2A visa program.

Beginning July 1, 2024, the bill requires a property owner to maintain records of all approved permits, including successor permits, for migrant labor camps or residential migrant housing.

The bill specifies the circumstances under which a housing site may not continue to be used and may be required to be removed.

The bill specifies that the construction or installation of housing for legally verified agricultural workers in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern is subject to the permit allocation systems of these areas.

The bill specifies that a housing site that was constructed and in use before July 1, 2024, may continue to be used, and the property owner may not be required by a governmental entity to make changes to meet the requirements of the bill with certain exceptions.

The bill does not appear to have a fiscal impact on state or local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Comprehensive Plans and Land Use Regulation

###### *Comprehensive Plans*

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

###### *Zoning*

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, sign regulations, or any other regulations controlling the development of land.<sup>5</sup>

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.<sup>6</sup> Common regulations on buildings within the zoning map districts include density,<sup>7</sup> height and bulk of buildings, setbacks, and parking requirements.<sup>8</sup> 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 rezoning through a rezoning application, which is reviewed by the local government and voted on by the governing body.<sup>9</sup> 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

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<sup>1</sup> Chapter 85-55, Laws of Fla.

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

<sup>3</sup> Section 163.3177(6)(a), F.S.

<sup>4</sup> Section 163.3177(6)(f), F.S.

<sup>5</sup> See ss. 163.3164 and 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. Section 163.3213, F.S.

<sup>6</sup> Indian River County, *General Zoning Questions*, [https://indianriver.gov/services/community\\_development/faq.php#collapse1250b1](https://indianriver.gov/services/community_development/faq.php#collapse1250b1) (last visited Jan 16, 2024).

<sup>7</sup> "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.

<sup>8</sup> Indian River County, *General Zoning Questions*, [https://indianriver.gov/services/community\\_development/faq.php#collapse1250b1](https://indianriver.gov/services/community_development/faq.php#collapse1250b1) (last visited Jan. 16, 2024).

<sup>9</sup> City of Tallahassee, *Application for Rezoning Review*, available at

<https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Jan. 16, 2024).

through an application for a variance.<sup>10</sup> However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

### Agricultural Lands

Under Florida's greenbelt law,<sup>11</sup> only lands that are used primarily for bona fide agricultural purposes may be classified agricultural. The law defines "bona fide agricultural purposes" to mean good faith commercial agricultural use of the land.<sup>12</sup> Various factors are considered when determining whether land is being used for a bona fide agricultural use, including 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 is not required; whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices; and whether the land is leased and, if so, the effective length, terms, and conditions of the lease.<sup>13</sup> Nonresidential buildings, structures, or facilities constructed on a farm for agritourism activities constitute a bona fide agricultural use of the land so long as the buildings, structures, or facilities are an integral part of the agricultural operation.<sup>14</sup>

### Migrant Farmworker Housing

Migrant farmworker housing is regulated by the Department of Health (DOH) in coordination with local health departments and federal law.<sup>15</sup> Migrant farmworker housing may include residential property, including mobile homes or a migrant labor camp consisting of dormitories constructed and operated as living quarters for migrant farmworkers.<sup>16</sup> Establishment of such housing requires advance notice, inspections, and permitting based on standards of construction, sanitation, equipment, and operation, as well as compliance with inspections during use.<sup>17</sup>

### Federal Regulations

The federal government authorizes farmers to hire seasonal or temporary workers from foreign countries through the H-2A visa program.<sup>18</sup> 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 to perform temporary or seasonal agricultural work, including, but not limited to, planting, cultivating, or harvesting labor.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> This housing can be in temporary labor camps that the farmer owns or controls, or they may use rental or public accommodations, such as hotels or motels.<sup>22</sup> The farmer is responsible for assuring certain health and safety measures are addressed in this housing, dictated by local or state regulations, or in

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<sup>10</sup> City of Tallahassee, *Variance and Appeals*, available at [https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa\\_variance.pdf](https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf) (last visited Jan. 16, 2024); Seminole County, *Variance Processes*, <https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.shtml> (last visited Jan. 16, 2024).

<sup>11</sup> Section 193.461, F.S.

<sup>12</sup> Section 193.461(3)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 570.87(1), F.S.

<sup>15</sup> Sections 381.008-381.00897, F.S.

<sup>16</sup> Section 381.008(5) and (8), F.S.

<sup>17</sup> Section 381.0083, F.S.

<sup>18</sup> U.S. Department of Agriculture (USDA), *H-2A Program*, <https://www.farmers.gov/working-with-us/h2a-visa-program> (last visited Jan. 16, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 20 C.F.R. s. 655.122(d).

<sup>22</sup> U.S. Department of Labor (DOL), *Fact Sheet #26G: H-2A Housing Standards for Rental and Public Accommodations*, <https://www.dol.gov/agencies/whd/fact-sheets/26g-housing-standards-for-rental-and-public-accommodations-H-2A> (last visited Jan. 16, 2024).

the absence of applicable local or state regulations, federal standards.<sup>23</sup> The federal regulations address the following health and safety concerns:

- Minimum square footage requirements;
- Sufficient and sanitary cooking and kitchen facilities;
- Heating, cooking, and water heating equipment;
- Adequate and sanitary toilet, laundry, handwashing, and bathing facilities;
- Sufficient lighting; and
- Refuse disposal.<sup>24</sup>

The Migrant and Seasonal Agricultural Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.<sup>25</sup>

#### *Florida Migrant Farmworker Housing*

Annually, an estimated 150,000 to 200,000 migrant and seasonal farmworkers travel to work in Florida.<sup>26</sup> The migrant labor camp program within DOH currently issues over 700 permits in 33 counties, ensuring that 34,000 migrant and seasonal farmworkers and their families live in housing that meets or exceeds standards set by law.<sup>27</sup> Migrant labor camps<sup>28</sup> and residential migrant housing<sup>29</sup> need a permit prior to opening.<sup>30</sup> DOH implements its own regulations which address the above health and safety concerns, as well as the use and storage of pesticides.<sup>31</sup> These regulations are applicable to mobile homes, private residential rentals, rooming houses, barracks, and housing authority projects for farmworkers when these facilities constitute a migrant labor camp or residential migrant housing.<sup>32</sup>

Any person who believes that the farmworker housing violates the farmworker housing rules and regulations may file a complaint with DOH. DOH, or its inspectors, may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate any facts, conditions, practices, or matters to determine whether any person has violated the applicable rules and regulations. It is a third-degree felony to establish, maintain, or operate any residential migrant housing or migrant labor camp without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal.<sup>33</sup>

#### 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.<sup>34</sup> An employer can verify this through the E-Verify

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<sup>23</sup> *Id.*

<sup>24</sup> 29 C.F.R. s. 1910.142.

<sup>25</sup> 29 U.S.C. 1801, *et. seq.*; The MSPA specifies that the term "migrant agricultural worker" does not include any temporary nonimmigrant person authorized to work in the U.S. under the H-2A program. 29 C.F.R. s. 500.20(p)(1)ii.

<sup>26</sup> DOH, *Migrant Farmworker Housing*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/index.html> (last visited Jan. 17, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> "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.

<sup>29</sup> "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.

<sup>30</sup> Section 381.0083, F.S.

<sup>31</sup> See Chapter 64E-14, F.A.C.; DOH, *Basic Guidelines*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/migrant-farm-workers-guidelines.html> (last visited Jan. 16, 2024).

<sup>32</sup> DOH, *Basic Guidelines*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/migrant-farm-workers-guidelines.html> (last visited Jan. 16, 2024).

<sup>33</sup> Section 381.0081(3), F.S.

<sup>34</sup> Section 448.095(2)(a), F.S.

system<sup>35</sup> 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.<sup>36</sup>

### Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,<sup>37</sup> may designate by rule certain areas that contain resources of statewide significance as an Area of Critical State Concern based on the recommendations of the Florida Department of Commerce.<sup>38</sup> To be designated as an Area of Critical State Concern, the area must:

- Contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance, the uncontrolled private or public development of which would cause substantial deterioration of such resources;
- Contain, or have a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- Have a significant impact upon, or be significantly impacted by, an existing or proposed major public facility or other area of major public investment, including, but not limited to, highways, ports, airports, energy facilities, and water management projects.<sup>39</sup>

Areas currently designated as Areas of Critical State Concern include the Big Cypress Area,<sup>40</sup> the Green Swamp Area,<sup>41</sup> the Florida Keys Area,<sup>42</sup> and the Apalachicola Bay Area.<sup>43</sup>

The Florida Keys Area of Critical State Concern includes the municipalities of Islamorada, Marathon, Layton, and Key Colony Beach and unincorporated Monroe County. The City of Key West has its own Area of Critical State Concern designation.<sup>44</sup>

### **Effect of the Bill**

The bill defines “legally verified agricultural worker” to mean a person who is lawfully present in the U.S.; has been verified through the E-Verify system and is authorized to work at the time of employment; is seasonally or annually employed in bona fide agricultural production; and remains lawfully present and authorized to work throughout the duration of that employment.. The term includes a migrant farmworker and a temporary worker with a valid H-2A visa.

The bill defines “housing site” to mean the totality of development supporting authorized housing, including buildings, mobile homes, barracks, dormitories used as living quarters, parking areas, common areas such as athletic fields or playgrounds, storage structures, and other related structures.

The bill prohibits a governmental entity from adopting or enforcing any legislation to inhibit the construction or installation of housing for legally verified agricultural workers on land classified as agricultural which is operated as a bona fide farm. However, a local government may adopt land use regulations that are less restrictive than those established in the bill.

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<sup>35</sup> “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)(c), F.S.

<sup>36</sup> Section 448.095(3)(b), F.S.

<sup>37</sup> S. 14.202, F.S., The Administration Commission is part of the Executive Office of the Governor.; *see also* s. 380.031(1), F.S.

<sup>38</sup> S. 380.05, F.S.

<sup>39</sup> S. 380.05(2), F.S.

<sup>40</sup> S. 380.055, F.S.

<sup>41</sup> S. 380.0551, F.S.

<sup>42</sup> S. 380.0552, F.S.

<sup>43</sup> S. 380.0555, F.S.

<sup>44</sup> Florida Commerce, *City of Key West and The Florida Keys Areas*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys> (last visited Jan. 16, 2024).

The bill requires the construction or installation of housing units for legally verified agricultural workers on parcels of land classified as agricultural to satisfy all of the following criteria:

- The dwelling units must meet federal, state, and local building standards, including DOH migrant farmworker housing standards and federal standards for H-2A visa housing. If written notice of intent is required to be submitted to DOH, the appropriate governmental entity with jurisdiction over the agricultural lands may also require submittal of a copy of the written notice.
- The housing site must be maintained in a neat, orderly, and safe manner.
- All structures containing dwelling units must be located a minimum of 10 feet apart.
- The square footage of the housing site's climate-controlled facilities may not exceed 1.5 percent of the property's area or 35,000 square feet, whichever is less.
- A housing site must provide front, side, and rear yard setbacks of at least 50 feet. However, an internal project driveway may be located in the required yard space if the yard is adjacent to a public roadway or to property that is under common ownership with the housing site.
- All access drives that serve the housing site must be made of packed shell, gravel, or a similar material that will provide a relatively dust-free surface.

Additionally, as part of the construction and installation criteria, the bill prohibits a housing site from being located less than 250 feet from a property line adjacent to property zoned for residential use. If the housing site is located less than 500 feet from any property line, screening must be provided between the housing site and any residentially developed adjacent parcels that are under different ownership. The screening may be designed in any of the following ways:

- Evergreen plants that, at the time of planting, are at least six feet in height and provide an overall screening opacity of 75 percent;
- A masonry wall at least six feet in height and finished on all sides with brick, stone, or painted or pigmented stucco;
- A solid wood or PVC fence at least six feet in height with the finished side of the fence facing out;
- A row of evergreen shade trees that, at the time of planting, are at least 10 feet in height, a minimum of two-inch caliper, and spaced no more than 20 feet apart; or
- A berm made with a combination of the materials listed above, which is at least six feet in height and provides an overall screening opacity of 75 percent at the time of installation.

The bill requires any local ordinance adopted pursuant to the requirements for farmworker housing created in the bill to comply with all state and federal regulations for migrant farmworker housing, as applicable, including rules adopted by DOH and federal regulations under the MSPA or the H-2A visa program.

Beginning July 1, 2024, the bill requires a property owner to maintain records of all approved permits, including successor permits, for migrant labor camps or residential migrant housing. The property owner must maintain such records for at least three years and make the records available for inspection within 14 days after receipt of a request for records by a governmental entity.

The bill specifies that a housing site may not continue to be used and can be required to be removed under the following circumstances:

- If, for any reason, a housing site is not being used for legally verified agricultural workers for longer than 365 days, any structures used as living quarters must be removed from the site within 180 days after receipt of a written notification from the county, unless the property owner can demonstrate that use of the site for housing legally verified agricultural workers will occur within 90 days after receipt of such written notification.
- If the property on which the housing site is located ceases to be classified as agricultural land, housing authorized by the bill ceases to be eligible for residential uses unless and until it is approved under the zoning and land use regulations of the governmental entity.
- If the permit authorized by DOH for the housing site is revoked, any structures must be removed from the housing site within 180 days after receipt of a written notification from the county unless the permit is reinstated by DOH.

The bill specifies that the construction or installation of housing for legally verified agricultural workers in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern is subject to the permit allocation systems of these areas.

The bill specifies that a housing site that was constructed and in use before July 1, 2024, may continue to be used, and the property owner may not be required by a governmental entity to make changes to meet the requirements of the bill, unless the housing site will be enlarged, remodeled, renovated, or rehabilitated. A property owner who is authorized to continue to use a housing site must provide regular maintenance and repair, including compliance with health and safety regulations and maintenance standards, for such housing site to ensure the health, safety, and habitability of the housing site.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 163.3162, F.S., related to agricultural lands and practices.

Section 2. Provides an effective date of July 1, 2024.

**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:**

The bill may have an indeterminate positive fiscal impact on agricultural producers that employ and house migrant farmworkers.

**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 expenditure 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:**

None.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2024, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made technical changes.

On February 22, 2024, the Infrastructure Strategies Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment defined legally verified agricultural worker; specified that the bill applies to housing for such workers; and specified that any living quarters, instead of dwelling units, not used for longer than 365 days must be removed from the housing site after receipt of written notification from a county.

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