

CHAPTER 2011-165

Committee Substitute for Committee Substitute for House Bill No. 421

An act relating to agricultural-related exemptions to water management requirements; amending s. 373.406, F.S.; revising an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands; clarifying the purposes of such activities; limiting applicability of the exemption; providing for retroactive application of the exemption; amending s. 373.407, F.S.; providing exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions; requiring a specified memorandum of agreement between the department and each water management district; authorizing the department to adopt rules; amending s. 403.927, F.S.; providing an exemption from mitigation requirements for converted agricultural lands under certain conditions; revising the definition of the term “agricultural activities” to include cultivating, fallowing, leveling, and implementation of specified practices and standards and to provide for certain impacts to surface waters and wetlands; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 373.406, Florida Statutes, is amended to read:

373.406 Exemptions.—The following exemptions shall apply:

(2) Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding impounding or diverting the flow of obstructing surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.

Section 2. Section 373.407, Florida Statutes, is amended to read:

373.407 Determination of qualification Memorandum of agreement for an agricultural-related exemption.—In the event of a dispute as to the applicability of an exemption, No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agriculture and Consumer Services shall assist in a determination by a water management district or landowner may as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the request of a water management district, the Department of Agriculture and Consumer Services to make a binding determination shall conduct a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption under in s. 373.406(2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement or amend an existing memorandum of agreement which sets forth shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its this review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s. 373.406(2) issue a recommendation.

Section 3. Subsection (3) and paragraph (a) of subsection (4) of section 403.927, Florida Statutes, are amended to read:

403.927 Use of water in farming and forestry activities.—

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter. However, mitigation under chapter 373 or this chapter to offset any adverse effects caused by agricultural activities that occurred before the conversion of the land is not required if the activities occurred on the land in the last 4 years preceding the conversion.

(4) As used in this section, the term:

(a) “Agricultural activities” includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, and placement of bridges and culverts, and implementation of best management practices adopted by the Department of Agriculture and Consumer Services or practice standards adopted by the United States Department of Agriculture’s Natural Resources Conservation Service, provided such operations are not for the sole or predominant purpose of impeding do not impede or diverting divert the flow of surface waters or adversely impacting wetlands.

Section 4. This act shall take effect July 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.