

CHAPTER 2011-7

Council Substitute for House Bill No. 7103

An act relating to agriculture; amending s. 163.3162, F.S.; prohibiting a county from enforcing certain limits on the activity of a bona fide farm operation on agricultural land under certain circumstances; prohibiting a county from charging agricultural lands for stormwater management assessments and fees under certain circumstances; allowing an assessment to be collected if credits against the assessment are provided for implementation of best management practices; providing exemptions from certain restrictions on a county's powers over the activity on agricultural land; providing a definition; providing for application; creating s. 163.3163, F.S.; creating the "Agricultural Land Acknowledgement Act"; providing legislative findings and intent; providing definitions; requiring an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous agricultural lands as a condition of the political subdivision issuing the permits; specifying information to be included in the acknowledgement; requiring that the acknowledgement be recorded in the official county records; authorizing the Department of Agriculture and Consumer Services to adopt rules; amending s. 205.064, F.S.; authorizing a person selling certain agricultural products who is not a natural person to qualify for an exemption from obtaining a local business tax receipt; amending s. 322.01, F.S.; revising the term "farm tractor" for purposes of drivers' licenses; amending s. 604.15, F.S.; revising the term "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products; amending s. 604.50, F.S.; exempting farm fences from the Florida Building Code; revising the term "nonresidential farm building"; exempting nonresidential farm buildings and farm fences from county and municipal codes and fees; specifying that the exemptions do not apply to code provisions implementing certain floodplain regulations; amending s. 624.4095, F.S.; requiring that gross written premiums for certain crop insurance not be included when calculating the insurer's gross writing ratio; requiring that liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; requiring that insurers who write other insurance products disclose a breakout of the gross written premiums for crop insurance; amending s. 823.145, F.S.; expanding the materials used in agricultural operations that may be disposed of by open burning; providing certain limitations on open burning; providing an effective date.

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

Section 1. Subsection (4) of section 163.3162, Florida Statutes, is amended to read:

163.3162 Agricultural Lands and Practices Act.—

(4) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(a) A county may not exercise any of its powers to adopt or enforce any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such activity is regulated through implemented best management practices, interim measures, or regulations adopted as rules under chapter 120 developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under chapter 120 as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

(b) A county may not charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

(c) For each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater ordinances, the county may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural pursuant to s. 193.461, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

1. The implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program;

2. The stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit; or

3. The implementation of best management practices or alternative measures which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture

and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit.

(d)(a) When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a county, and the implemented best management practice, regulation, or interim measure does not specifically address wellfield protection, a county may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any county to address an emergency as provided for in chapter 252.

(e)(b) This subsection may not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to traffic, noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.

(f)(e) This subsection does not limit the powers of a predominantly urbanized county with a population greater than 1,500,000 and more than 25 municipalities, not operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968, which has a delegated pollution control program under s. 403.182 and includes drainage basins that are part of the Everglades Stormwater Program, to enact ordinances, regulations, or other measures to comply with the provisions of s. 373.4592, or which are necessary to carrying out a county's duties pursuant to the terms and conditions of any environmental program delegated to the county by agreement with a state agency.

(g)(d) For purposes of this subsection, a county ordinance that regulates the transportation or land application of domestic wastewater residuals or other forms of sewage sludge shall not be deemed to be duplication of regulation.

(h) This subsection does not limit a county's powers to:

1. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003.

2. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area.

3. Enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district.

As used in this paragraph, the term "wetlands" has the same meaning as defined in s. 373.019.

(i) The provisions of this subsection that limit a county's authority to adopt or enforce any ordinance, regulation, rule, or policy, or to charge any assessment or fee for stormwater management, apply only to a bona fide farm operation as described in this subsection.

(j) This subsection does not apply to a municipal services benefit unit established before March 1, 2009, pursuant to s. 125.01(1)(q), predominately for flood control or water supply benefits.

Section 2. Section 163.3163, Florida Statutes, is created to read:

163.3163 Applications for development permits; disclosure and acknowledgement of contiguous sustainable agricultural land.—

(1) This section may be cited as the "Agricultural Land Acknowledgement Act."

(2) The Legislature finds that nonagricultural land which neighbors agricultural land may adversely affect agricultural production and farm operations on the agricultural land and may lead to the agricultural land's conversion to urban, suburban, or other nonagricultural uses. The Legislature intends to reduce the occurrence of conflicts between agricultural and nonagricultural land uses and encourage sustainable agricultural land use. The purpose of this section is to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land.

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

(a) "Contiguous" means touching, bordering, or adjoining along a boundary. For purposes of this section, properties that would be contiguous if not separated by a roadway, railroad, or other public easement are considered contiguous.

(b) "Farm operation" has the same meaning as defined in s. 823.14.

(c) "Sustainable agricultural land" means land classified as agricultural land pursuant to s. 193.461 which is used for a farm operation that uses current technology, based on science or research and demonstrated measurable increases in productivity, to meet future food, feed, fiber, and energy needs, while considering the environmental impacts and the social and economic benefits to the rural communities.

(4)(a) Before a political subdivision issues a local land use permit, building permit, or certificate of occupancy for nonagricultural land contiguous to sustainable agricultural land, the political subdivision shall require that, as a condition of issuing the permit or certificate, the applicant for the permit or certificate sign and submit to the political subdivision, in a format that is recordable in the official records of the county in which the political subdivision is located, a written acknowledgement of contiguous sustainable agricultural land in the following form:

ACKNOWLEDGEMENT OF CONTIGUOUS SUSTAINABLE AGRICULTURAL LAND

I, ...(name of applicant)..., understand that my property located at ... (address of nonagricultural land)..., as further described in the attached legal description, is contiguous to sustainable agricultural land located at ...(address of agricultural land)..., as further described in the attached legal description.

I acknowledge and understand that the farm operation on the contiguous sustainable agricultural land identified herein will be conducted according to generally accepted agricultural practices as provided in the Florida Right to Farm Act, s. 823.14, Florida Statutes.

Signature: ...(signature of applicant)....

Date: ...(date)....

(b) An acknowledgement submitted to a political subdivision under paragraph (a) shall be recorded in the official records of the county in which the political subdivision is located.

(c) The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, may adopt rules to administer this section.

Section 3. Subsection (1) of section 205.064, Florida Statutes, is amended to read:

205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.—

(1) A local business tax receipt is not required of any ~~natural~~ person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such ~~natural~~ person in the state.

Section 4. Subsection (20) of section 322.01, Florida Statutes, is amended to read:

322.01 Definitions.—As used in this chapter:

(20) “Farm tractor” means a motor vehicle that is:

(a) Operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another; or

(b) Designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

Section 5. Subsection (1) of section 604.15, Florida Statutes, is amended to read:

604.15 Dealers in agricultural products; definitions.—For the purpose of ss. 604.15-604.34, the following words and terms, when used, shall be construed to mean:

(1) “Agricultural products” means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); sod; ~~tropical foliage~~; horticulture; hay; livestock; milk and milk products; poultry and poultry products; the fruit of the saw palmetto (meaning the fruit of the *Serenoa repens*); limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss, or Florida Key limes); and any other nonexempt agricultural products produced in the state, except tobacco, sugarcane, tropical foliage, timber and timber byproducts, forest products as defined in s. 591.17, and citrus other than limes.

Section 6. Section 604.50, Florida Statutes, is amended to read:

604.50 Nonresidential farm buildings and farm fences.—

(1) Notwithstanding any other law to the contrary, any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal building code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.

(2) As used in ~~For purposes of~~ this section, the term:

(a) “Nonresidential farm building” means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(9)(c) or that is used primarily for agricultural purposes, is located on a farm that is not used as a residential dwelling, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

(b) ~~The term “Farm”~~ has the same meaning is as provided defined in s. 823.14.

Section 7. Subsection (7) is added to section 624.4095, Florida Statutes, to read:

624.4095 Premiums written; restrictions.—

(7) For purposes of ss. 624.407 and 624.408 and this section, with regard to capital and surplus required, gross written premiums for federal multiple-

peril crop insurance that is ceded to the Federal Crop Insurance Corporation and authorized reinsurers shall not be included when calculating the insurer's gross writing ratio. The liabilities for ceded reinsurance premiums payable for federal multiple-peril crop insurance ceded to the Federal Crop Insurance Corporation and authorized reinsurers shall be netted against the asset for amounts recoverable from reinsurers. Each insurer that writes other insurance products together with federal multiple-peril crop insurance shall disclose in the notes to the annual and quarterly financial statement, or file a supplement to the financial statement that discloses, a breakout of the gross written premiums for federal multiple-peril crop insurance.

Section 8. Section 823.145, Florida Statutes, is amended to read:

823.145 Disposal by open burning of certain materials ~~mulch plastic~~ used in agricultural operations.—Polyethylene agricultural ~~mulch~~ plastic; damaged, nonsalvageable, untreated wood pallets; and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning provided that no public nuisance or any condition adversely affecting the environment or the public health is created thereby and that state or federal national ambient air quality standards are not violated.

Section 9. This act shall take effect July 1, 2010.

Vetoed by the Governor May 15, 2010.

Passed the House over the veto March 24, 2011.

Passed the Senate over the veto March 24, 2011.

Filed in Office Secretary of State March 29, 2011.