

CHAPTER 2012-83

Committee Substitute for House Bill No. 1197

An act relating to agriculture; amending s. 163.3162, F.S.; defining the term “governmental entity”; prohibiting certain governmental entities from charging stormwater management assessments or fees on certain bona fide farm operations except under certain circumstances; providing for applicability; conforming provisions; amending s. 206.41, F.S.; revising the definition of the term “agricultural and aquacultural purposes” for purposes of the required refund of state taxes imposed on motor fuel used for such purposes; amending s. 316.515, F.S.; revising the Florida Uniform Traffic Control Law to authorize the use of citrus harvesting equipment and citrus fruit loaders to transport certain agricultural products and to authorize the use of certain motor vehicles to transport citrus; amending s. 479.11, F.S.; conforming provisions; amending s. 570.07, F.S.; revising the powers and duties of the Department of Agricultural and Consumer Services to enforce laws and rules relating to the use of commercial stock feeds; amending s. 580.036, F.S.; authorizing the department to adopt rules establishing certain standards for regulating commercial feed or feedstuff; requiring the department to consult with the Commercial Feed Technical Council in the development of such rules; amending s. 586.02, F.S.; defining the term “apiculture” for purposes of the Florida Honey Certification and Honeybee Law; conforming provisions; creating s. 586.055, F.S.; authorizing apiaries to be located on certain lands; amending s. 586.10, F.S.; providing for preemption to the state of authority to regulate, inspect, and permit managed honeybee colonies; providing that certain local government ordinances are superseded; revising the powers and duties of the Department of Agriculture and Consumer Services relating to honey certification and honeybees; requiring the department to adopt rules and, before adopting certain rules, consult with local governments and other affected stakeholders; amending s. 599.004, F.S.; revising qualifications for a certified Florida Farm Winery; reenacting s. 561.24(5), F.S., relating to limitations on the issuance of wine distributor licenses and exporter registrations, to incorporate changes made by the act to s. 599.004, F.S., in a reference thereto; amending s. 604.50, F.S.; defining the term “farm sign”; providing an exemption from the Florida Building Code for farm signs; prohibiting farm signs located on public roads from violating certain standards; limiting the authority of local governments to enforce certain requirements with respect to farm signs; amending s. 823.14, F.S.; revising definitions relating to the Florida Right to Farm Act; limiting the conditions under which apiculture or the placement of apiaries may be deemed public or private nuisances; limiting the authority of local governments to regulate apiculture and the placement of apiaries on agricultural land; reenacting ss. 163.3163(3)(b), 193.461(5), 403.9337(4), 570.961(4), and 812.015(1)(g), F.S., relating to agricultural lands and practices, the Agricultural Land Acknowledgement Act, the classification and tax assessment of agricultural lands, an

exemption from certain provisions related to the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, provisions related to the promotion of agritourism, and penalties for retail or farm theft, respectively, to incorporate amendments made by the act to s. 823.14, F.S.; in references thereto; repealing s. 828.161, F.S., relating to the prohibition of artificial dying or coloring of certain animals or fowl; providing an effective date.

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

Section 1. Subsection (2) and paragraphs (b), (c), and (i) of subsection (3) of section 163.3162, Florida Statutes, are amended to read:

163.3162 Agricultural Lands and Practices.—

(2) DEFINITIONS.—As used in this section, the term:

(a) “Farm” has the same meaning as provided defined in s. 823.14.

(b) “Farm operation” has the same meaning as provided defined in s. 823.14.

(c) “Farm product” means any plant, as defined in s. 581.011, or animal useful to humans and includes, but is not limited to, any product derived therefrom.

(d) “Governmental entity” has the same meaning as provided in s. 164.1031. The term does not include a water control district established under chapter 298 or a special district created by special act for water management purposes.

(3) 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:

(b) A governmental entity ~~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 governmental entity ~~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 governmental entity's ~~county's~~ intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater ordinances, the governmental entity ~~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 governmental entity ~~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.

(i) The provisions of this subsection that limit a governmental entity's ~~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.

Section 2. Paragraph (c) of subsection (4) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(4)

(c)1. Any person who uses any motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes on which fuel the tax imposed by paragraph (1)(e), paragraph (1)(f), or paragraph (1)(g) has been paid is entitled to a refund of such tax.

2. For the purposes of this paragraph, “agricultural and aquacultural purposes” means motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction does not apply to the movement of a farm vehicle, ~~or farm equipment, citrus harvesting equipment, or citrus fruit loaders~~ between farms. The transporting of bees by water and the operating of equipment

used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

3. For the purposes of this paragraph, “commercial fishing and aquacultural purposes” means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

4. For the purposes of this paragraph, “commercial aviation purposes” means motor fuel used in the operation of aviation ground support vehicles or equipment, no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state.

Section 3. Paragraph (a) of subsection (5) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT; AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, citrus harvesting equipment, citrus fruit loaders, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized for the purpose of transporting peanuts, grains, soybeans, citrus, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and rules of the Department of Transportation.

Section 4. Subsection (5) of section 479.11, Florida Statutes, is amended to read:

479.11 Specified signs prohibited.—No sign shall be erected, used, operated, or maintained:

(5)(a) Which displays intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system or which is illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate their vehicles.

(b) If the sign is on the premises of an establishment as provided in s. 479.16(1), the local government authority with jurisdiction over the location of the sign shall enforce the provisions of this section as provided in chapter 162 and this section.

Section 5. Paragraph (c) of subsection (16) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(16) To enforce the state laws and rules relating to:

(c) Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(n) must use the standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes.

Section 6. Paragraph (g) is added to subsection (2) of section 580.036, Florida Statutes, to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and wellbeing and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or

feedstuff, to ensure that these products are safe for human consumption. Such standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council created under s. 580.151.

Section 7. Subsections (2) through (14) of section 586.02, Florida Statutes, are renumbered as subsections (3) through (15), respectively, and a new subsection (2) is added to that section to read:

586.02 Definitions.—As used in this chapter:

(2) “Apiculture” means the raising, caring for, and breeding of honeybees.

Section 8. Section 586.055, Florida Statutes, is created to read:

586.055 Location of apiaries.—An apiary may be located on land classified as agricultural under s. 193.461 or on land that is integral to a beekeeping operation.

Section 9. Section 586.10, Florida Statutes, is amended to read:

586.10 Powers and duties of department; preemption of local government ordinances.—

(1) The authority to regulate, inspect, and permit managed honeybee colonies and to adopt rules on the placement and location of registered inspected managed honeybee colonies is preempted to the state through the department and supersedes any related ordinance adopted by a county, municipality, or political subdivision thereof.

(2) The department shall have the powers and duties to:

(a)(1) Administer and enforce the provisions of this chapter.

(b)(2) Adopt Promulgate rules necessary to enforce the enforcement of this chapter.

(3)—Promulgate rules relating to standard grades for honey and other honeybee products, and, after consultation with local governments and other affected stakeholders, rules to administer this section.

(3) The department may:

(a)(4) Enter upon any public or private premises premise or carrier during regular business hours for the purpose of inspection, quarantine, destruction, or treatment of honeybees, used beekeeping equipment, unwanted races of honeybees, or regulated articles.

(b)(5) Declare a honeybee pest or unwanted race of honeybees to be a nuisance to the beekeeping industry as well as any honeybee or other article infested or infected article therewith or that is has been exposed to infestation or infection in a manner believed likely to communicate the infection or infestation.

~~(c)(6)~~ Declare a quarantine against any area, place, or political unit within this state or other states, territories, or foreign countries, or portion thereof, in reference to honeybee pests or unwanted races of honeybees and prohibit the movement within this state from other states, territories, or foreign countries of all honeybees, honeybee products, used beekeeping equipment, or other articles from such quarantined places or areas which are likely to carry honeybee pests or unwanted races of honeybees if the quarantine is determined, after due investigation, to be necessary in order to protect this state's beekeeping industry, honeybees, and the public. In such cases, the quarantine may be made absolute or rules may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold in, or otherwise disposed of in this state.

~~(d)(7)~~ Enter into cooperative arrangements with any person, municipality, county, or other department of this state or any agency, officer, or authority of other states or the Federal United States Government, including the United States Department of Agriculture, for inspection of honeybees, honeybee pests, or unwanted races of honeybees and products thereof and the control or eradication of honeybee pests and unwanted races of honeybees, and contribute a share of the expenses incurred under such arrangements.

~~(e)(8)~~ Investigate ~~Carry on investigations of~~ methods of control, eradication, and prevention of dissemination of honeybee pests or unwanted races of honeybees.

~~(f)(9)~~ Inspect or cause to be inspected all apiaries in the state at such intervals as it may deem best and to keep a complete, accurate, and current list of all inspected apiaries to include the:

- 1.(a) Name of the apiary.
- 2.(b) Name of the owner of the apiary.
- 3.(c) Mailing address of the apiary owner.
- 4.(d) Location of the apiary.
- 5.(e) Number of hives in the apiary.
- 6.(f) Pest problems associated with the apiary.
- 7.(g) Brands used by beekeepers where applicable.

~~(g)(10)~~ Collect or accept from other agencies or individuals specimens of arthropods, nematodes, fungi, bacteria, or other organisms for identification.

~~(h)(11)~~ Confiscate, destroy, or make use of abandoned beehives or beekeeping equipment.

(i)(12) Require the identification of ownership of apiaries.

(j)(13) Enter into a compliance agreement with any person engaged in purchasing, assembling, exchanging, processing, utilizing, treating, or moving beekeeping equipment or honeybees.

(k)(14) Make and issue to beekeepers certificates of registration and inspection, following proper inspection and certification of their honeybee colonies.

(l)(15) Revoke or suspend a beekeeper's or honeybee product processor's certificate of inspection or use of a certificate or permit issued by the department if the department determines that the a beekeeper or honeybee product processor is selling or offering for sale or is distributing or offering to distribute honeybees, honeybee products, or beekeeping equipment in violation of this chapter or rules adopted under this chapter, or has aided or abetted in such the violation, the department may revoke or suspend her or his certificate of inspection or the use of any certificate or permit issued by the department.

~~(m)(16) The department may~~ Refuse the certification of any honeybees, honeybee products, or beekeeping equipment ~~if when~~ it is determined that an unwanted race of honeybees exists, or honeybee pests exist on honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department.

~~(n)(17) The department is authorized to~~ Conduct, supervise, or cause the fumigation, destruction, or treatment of honeybees, including unwanted races of honeybees, honeybee products, and used beekeeping equipment or other articles infested or infected by honeybee pests or unwanted races of honeybees or so exposed to infection or infestation that it is reasonably believed that infection or infestation could exist.

~~(o)(18) The department may~~ Require the removal from this state of any honeybees or beekeeping equipment ~~that is which has been~~ brought into the state in violation of this chapter or the rules adopted under this chapter.

Section 10. Paragraph (a) of subsection (1) of section 599.004, Florida Statutes, is amended to read:

599.004 Florida Farm Winery Program; registration; logo; fees.—

(1) The Florida Farm Winery Program is established within the Department of Agriculture and Consumer Services. Under this program, a winery may qualify as a tourist attraction only if it is registered with and certified by the department as a Florida Farm Winery. A winery may not claim to be certified unless it has received written approval from the department.

(a) To qualify as a certified Florida Farm Winery, a winery must shall meet the following standards:

1. Produce or sell less than 250,000 gallons of wine annually of which 60 percent of the wine produced is made from state agricultural products.

2. Maintain a minimum of 5 ~~10~~ acres of owned or managed land vineyards in Florida which produces commodities used in the production of wine.

3. Be open to the public for tours, tastings, and sales at least 30 hours each week.

4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.

5. Pay an annual application and registration fee of \$100.

Section 11. For the purpose of incorporating the amendment made by this act to section 599.004, Florida Statutes, in a reference thereto, subsection (5) of section 561.24, Florida Statutes, is reenacted to read:

561.24 Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.—

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation complies with all of the provisions of the Beverage Law of Florida, as amended, and of this section and establishes by satisfactory evidence to the division that, during the 6-month period next preceding its application for such renewal, of the total volume of its sales of spirituous liquors, in either dollars or quantity, not more than 40 percent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified, or distilled by any corporation with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the corporation so owning stock in the applicant corporation. Any manufacturer of wine holding a license as a distributor on the effective date of this act shall be entitled to a renewal of such license notwithstanding the provisions of subsections (1)-(5). This section does not apply to any winery qualifying as a certified Florida Farm Winery under s. 599.004.

Section 12. Section 604.50, Florida Statutes, is reordered and amended to read:

604.50 Nonresidential farm buildings; ~~and farm fences; farm signs~~.—

(1) Notwithstanding any provision of ~~other~~ law to the contrary, any nonresidential farm building, ~~or farm fence, or farm sign~~ is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8).

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

~~(a)(b)~~ “Farm” has the same meaning as provided in s. 823.14.

(b) “Farm sign” means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.

~~(c)(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 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.

Section 13. Paragraphs (b) and (c) of subsection (3) of section 823.14, Florida Statutes, are amended to read:

823.14 Florida Right to Farm Act.—

(3) DEFINITIONS.—As used in this section:

(b) “Farm operation” means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm, honeybee, or apiculture products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(c) “Farm product” means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom.

Section 14. For the purpose of incorporating the amendment made by this act to section 823.14, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 163.3163, Florida Statutes, is reenacted to read:

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

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

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

Section 15. For the purpose of incorporating the amendment made by this act to section 823.14, Florida Statutes, in a reference thereto, subsection (5) of section 193.461, Florida Statutes, is reenacted to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(5) For the purpose of this section, “agricultural purposes” includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.

Section 16. For the purpose of incorporating the amendment made by this act to section 823.14, Florida Statutes, in a reference thereto, subsection (4) of section 403.9337, Florida Statutes, is reenacted to read:

403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.—

(4) This section does not apply to the use of fertilizer on farm operations as defined in s. 823.14 or on lands classified as agricultural lands pursuant to s. 193.461.

Section 17. For the purpose of incorporating the amendment made by this act to section 823.14, Florida Statutes, in a reference thereto, subsection (4) of section 570.961, Florida Statutes, is reenacted to read:

570.961 Definitions.—As used in ss. 570.96-570.962, the term:

(4) “Farm operation” has the same meaning as defined in s. 823.14.

Section 18. For the purpose of incorporating the amendment made by this act to section 823.14, Florida Statutes, in a reference thereto, paragraph (g) of subsection (1) of section 812.015, Florida Statutes, is reenacted to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(g) “Farm theft” means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. The term includes the unlawful taking possession of equipment and associated materials used to grow or produce farm products as defined in s. 823.14(3)(c).

Section 19. Section 828.161, Florida Statutes, is repealed.

Section 20. This act shall take effect July 1, 2012.

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.