

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: _____

Subject: Florida Agricultural Development Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates the Florida Agricultural Development Act to provide assistance to citizens who have been detrimentally affected by (North American Free Trade Agreement) NAFTA, the elimination of federal crop subsidies, and environmental protection mandates. The Florida Agricultural Development Authority (FADA) is created to authorize and establish farmer and beginning farmer loan programs and alternative agriculture assistance programs to:

Assist in the financing of: agricultural land acquisitions, improvements, technology, and depreciable agricultural property for the purpose of farming; soil and water conservation practices; research and development costs for qualified producers, processors, and manufacturers of agriculture products and support organizations; and, operating expenses and cash-flow requirements of farming; and,

Promote diversification of the farm economy.

The authority would act as a facilitator between farmers and financial institutions. It could issue tax exempt bonds to lending institutions to fund agricultural loans and to participate in any federal programs designed to assist beginning farmers.

The bill directs the FADA to function as a public entity and requires that it be composed of eight members, including the Commissioner of Agriculture or a designee who will be acting in an ex officio, non-voting capacity. The authority must prepare an annual report to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

It is expected that the authority will be self-sustaining from loan fees, as well as federal, state and local grants, and other revenues generated by its activities.

This act shall take effect July 1 of the year in which it is enacted or upon becoming a law, whichever is earlier.

This bill creates sections 159.8083 and 570.251-570.2815, Florida Statutes. This bill amends sections 159.804 and 159.809, Florida Statutes.

II. Present Situation:

Florida farmers and agribusinesses affected by NAFTA, the elimination of federal crop subsidies, and environmental protection mandates have limited sources of financial assistance if they choose to transition into alternative agricultural crops. The federal government has two agricultural loan programs available to state farmers: the United States Department of Agriculture's Farm Services Agency Program and the Farm Credit System. Farmers meeting specific criteria may apply for this assistance, as provided for in the Federal Agriculture Improvement and Reform Act of 1996. However, Florida does not currently have an agricultural loan program to provide loans to beginning farmers or existing farmers who wish to convert to alternative agricultural crops or to alternative agricultural producers and processors.

According to the National Council of State Agricultural Finance Programs, the states of Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota and Wisconsin have Aggie Bonds, or beginning farmer loan programs. The purpose of Aggie Bonds is to provide an effective means for federal-state-industry linkages where government can assist beginning and first-time farmers to purchase land, farm equipment, farm buildings, and breeding livestock. The bonds offer limited tax incentives and allow credit decisions and financial risk to remain with local lending institutions.

Currently, the Department of Agriculture and Consumer Services operates AgVenture Services, a program designed to provide assistance in areas such as planning, marketing, research, facilities and equipment discounts, and resource network referrals for start-up agribusinesses and fledgling enterprises. While the department program does not provide loans or issue bonds, it has indicated that it already offers many services outlined in the bill. The department has made a 1998 legislative budget request for funds intended to be used to provide monetary assistance to farmers and agricultural entrepreneurs meeting specific criteria.

III. Effect of Proposed Changes:

Section 1: The bill creates s. 570.252, F.S. The Legislature finds within rural parts of the state an agricultural debilitating business economy exists and that these conditions have made the sale and purchase of agricultural land by and among family farmers a virtual impossibility. Furthermore, these conditions are adversarial to the family farm and rural communities that depend on

agribusiness and unless Florida farm policy enhances opportunities for these individuals through program intervention, including financing activities, conditions exist to destroy the basic fabric of rural agriculture.

Section 570.253, F.S., is created to provide definitions for the terms “agricultural improvements,” “agricultural land,” “agricultural producer,” “agricultural processor,” “authority,” “Bankhead-Jones Farm Tenant Act,” “beginning farmer,” “bonds,” “conservation farm equipment,” “depreciable agricultural property,” “FAIR Farm Act,” “farming,” “Internal Revenue Code,” “lending institution,” “mortgage,” “mortgage lender,” “mortgage loan,” “note,” “soil and water conservation practices,” “secured loan,” and “state agency.”

Section 570.254, F.S., creates the FADA to authorize and establish farmer and beginning farmer loan programs and alternative agriculture assistance programs to:

Assist in the financing of: agricultural land acquisitions, improvements, technology, and depreciable agricultural property for the purpose of farming; soil and water conservation practices; research and development costs for qualified producers, processors, and manufacturers of agriculture products and support organizations; and, operating expenses and cash-flow requirements of farming; and,

Promote diversification of the farm economy through the growth and development of new crops or livestock not customarily grown or produced in this state or that emphasizes a vertical integration of agricultural products into a finished agricultural product or byproduct for consumption or use.

The FADA Board consists of eight members, including the commissioner or the commissioner’s designee, who shall be an ex officio nonvoting member, except in the case of a tie vote. Each of the following entities shall submit a list of three nominees to the Commissioner of Agriculture:

- The Florida Farm Bureau Federation,
- The Institute of Food and Agricultural Sciences of the University of Florida,
- The Florida Agricultural and Mechanical University,
- The Florida Agricultural Resources and Mobilization Foundation, Inc. (FARM Foundation),
- The Technological Research and Development Authority., and
- The Rural Development Committee.

The remaining at-large member must represent financial institutions experienced in agricultural lending or otherwise be a person specifically interested in agricultural and family development. The at-large member is to be appointed by the Commissioner of Agriculture. The bill provides for term limits for members; organization of the board; for the election of a chair and vice chair; the establishment of a four voting member quorum; and, per diem and travel expenses. Meeting of the Board addressing the official business of the FADA shall be open and noticed to the public. Board members are also to give bond as required by law for public officers.

Section 570.255, F.S., is created to provide for general powers of FADA which include, but are not limited to, the power to: issue negotiable bonds and notes in order to finance programs; sue and be sued in its own name; have and alter a corporate seal; make and alter bylaws for its management and programs; make and execute agreements, contracts, and other instruments with any public or private entity; lease, purchase, accept a gift or donation of, or otherwise acquire, use, own, hold, improve, or otherwise deal in or with, real or personal property, and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any assets, loans and equity interests acquired in the financing of projects funded by the authority; procure insurance against any loss in connection with its operations and property interests; fix and collect fees and charges for its services; subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority; accept appropriations, gifts, grants, loans, or other aid from public or private entities; provide public and private entities with technical assistance, education, counseling, and grants; cooperate with other local, state, or federal governmental agencies to conduct agricultural studies and to exchange information with similar authorities and agencies in other states; enter contracts for services; and adopt rules pursuant to ss. 120.54 and 120.536(1), F.S., in conjunction with its statutory programs and guidelines.

Section 570.256, F.S., is created to authorize the board to appoint an executive director of the FADA to advise the authority on matters relating to: agricultural land and property and finance; carry out all directives from the authority; hire and supervise staff; and be custodian of all books, documents, minute books, seals, and papers filed with the authority.

Section 570.257, F.S., is created requiring FADA to submit a report regarding its operations, accomplishments, farmers need assessments, financial information and other information as specified to the Governor, President of the Senate, the Speaker of the House of Representatives, and the Auditor General by February 15 of each year. It requires the FADA to have certified public accountants prepare statements of financial condition including management review commentary.

Section 570.258, F.S., is created to require that the authority use surplus moneys¹ to provide loans, grants, subsidies, and other services or assistance to beginning farmers or agricultural producers.

Section 570.259, F.S., is created to provide that state and federal programs may be combined to facilitate the FADA's intended purpose.

Section 570.260, F.S., is created to allow the FADA to develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. The FADA is authorized to participate in federal programs and to provide by rule the criteria by which a beginning farmer is eligible for a loan under the program. The FADA is authorized to provide specific conditions and covenants in a mortgage or secured loan that the loan may not be assumed or that any interest in the land or improvements or

¹Moneys not used to service bonds and notes, pay administrative expenses, or provide for working capital.

depreciable property may not be leased, sold or otherwise conveyed without prior written consent. The FADA is also authorized to disclose in a mortgage or secured loan that the authority has the power to raise the interest rate of a loan in certain circumstances.

Sections 570.261 and 570.262, F.S., are created to provide loans directly or indirectly to "beginning farmers." Indirect lending activities will be conducted through a mortgage lender. The terms and provisions of the mortgage or secured loan contract in both circumstances are established by the rules of the FADA.

Section 570.263, F.S., is created to authorize the FADA to purchase mortgage loans and secured loans from mortgage lenders. Mortgage lenders must certify that the mortgage or secured loans purchased are loans made to beginning farmers.

Section 570.264, F.S., is created to authorize the FADA, subject to agreement with bondholders or note holders, to renegotiate, waive default, foreclose, commence, prosecute, and enforce a judgment in any action regarding mortgages and secured loans.

Section 570.265, F.S., is created to authorize the FADA to issue negotiable bonds and notes in principal amounts that are necessary to provide sufficient funds for achievement of its corporate purposes. Bonds and notes are payable solely and only out of the moneys, assets, or revenues of the FADA and bonds and notes are not an obligation of the state or any political subdivision thereof. Bonds and notes can only be authorized by a resolution of the FADA. The FADA is required to publish a notice of intention to issue bonds or notes in a newspaper of general circulation published in the state. Bonds and notes issued for financing the beginning farmer loan program are exempt from taxation by the state and interest earned on bonds and notes are exempt from corporate income tax.

Section 570.266, F.S., is created to establish bond reserve funds to be used solely for the payment of the principal of bonds secured in or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed before maturity.

Section 570.267, F.S., is created to provide for remedies of bondholders and note holders and provides for the appointment of a trustee to represent the holders of bonds or notes in the event the authority defaults in the payment of principal or interest or fails or refuses to comply with the provisions of this act. This section also specifies the duties and powers of the trustee representing bond or note holders in the enforcement and protection of their rights.

Section 570.268, F.S., is created to pledge that the state will not interfere with the rights of the FADA to fulfill the terms of agreements made with the holders of the bonds or notes or in any way impair the rights and remedies of the holders until the bonds or notes and all related costs are fully met and discharged.

Section 570.269, F.S., is created deeming bonds and notes as legal investments and that bonds and notes are also securities that may be deposited with and received by public officers, state departments and agencies, and political subdivisions.

Section 570.270, F.S., is created to provide banking and accounting requirements for moneys of the FADA and authorizes the Auditor General periodically to examine its accounts and books. The FADA is required to submit reports of every external examination of the authority's books and accounts to the Governor, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives.

Section 570.271, F.S., is created to limit liability for members of the FADA and persons acting on its behalf, and to indemnify them from personal liability in carrying out the powers and duties of this act. The FADA is authorized to carry insurance or other indemnification for any actions arising out of such duties.

Section 570.272, F.S., is created requiring state officers, departments, and agencies to render services to the authority within their respective functions as requested by the authority.

Section 570.273, F.S., is created providing that this act, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

Section 570.274, F.S., is created to require that any member, other than the executive director, possibly having conflicting financial interests be disclosed in writing and included in the minutes of the FADA. Conflicts of interest are specified regarding the executive director of the FADA.

Section 570.275, F.S., is created exempting the FADA from the competitive bid laws of the state.

Section 570.276, F.S., is created to transfer the trust assets of the Florida Rural Rehabilitation Corporation, now in trust by the federal government, because the corporation had been dissolved.

Section 570.277, F.S., is created to allow the FADA, through agreements with the United States Secretary of Agriculture, to use the trust assets of other funds in part or in whole within the State of Florida.

Section 570.278, F.S., is created to indemnify the United States, the authority, and the United States Secretary of Agriculture from liability regarding the transfer of assets to the FADA.

Section 570.279, F.S., is created providing for an additional beginning farmer loan program which will allow for the financing of agricultural properties in excess of Internal Revenue Code² lending limits. Repayment obligations may be secured or unsecured and bond and note agreements may be entered as provided by rule of the FADA after being authorized by resolution.

²Section 147, Internal Revenue Code, caps loans at \$250,000.

Section 570.280, F.S., is created to authorize the FADA: to establish and develop an agricultural loan assistance program; to provide operating capital to farmers, agricultural producers, or agricultural processors by providing grants to lending or educational institutions; to require the FADA to make application forms available for the program; to specify eligibility criteria prescribed in statute or rule. The FADA may participate in and cooperate with programs of an agency or instrumentality of the federal government and may place additional eligibility requirements on farmers and lending institutions regarding financing activities in conjunction with grant subsidies. The FADA is authorized to establish appropriate enforcement provisions by rule, including, but not limited to, the payment of civil penalties by a lending institution or farmer. The FADA or lending institution is prohibited from charging more than 1.5 percent on the amount of the loan as a one time processing charge for any moneys lent by the authority or lending institution to the farmer under this act. In making any loan of the authority's funds, no other fees or interest may be charged to the farmer for such a loan under this act.

Section 570.2815, F.S., is created to require the authority to create and develop the following alternative agriculture assistance programs:

- Insurance or loan guarantee program to insure or guarantee all or part of a loan made for the acquisition of seed or root stock;
- Interest buy-down program to reduce the interest rate charged on a loan for the acquisition of seed or root stock;
- Cost-sharing program to reimburse the producer for the cost of converting land planted in row crops or pasture to alternative agricultural crops;
- Management assistance and training programs to train and assist agricultural producers to effectively manage alternative agriculture production operations.

Section 2. Section 159.8082, F.S., is created to establish an agricultural development bond pool to be used solely to provide written confirmations for private activity bonds to the FADA to finance agricultural development.

Section 3. Section 159.804, F.S., is amended to allocate, on January 1, 1999, the next \$10 million of the state volume limitation to the agricultural development pool and requires allocations to be increased in subsequent years in \$2 million increments.

Section 4. Section 159.809, F.S., is amended to specify that on November 16 of each year, any portion of the initial allocation, other than as provided in ss. 159.8082 and 159.8083, F.S., for which an issuance report for bonds has not been received, shall be added to the state allocation pool.

Section 5. This act shall take effect July 1 of the year in which it is enacted or upon becoming a law, whichever is earlier.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Art. VII, s. 18, State Constitution, imposes a requirement upon the Legislature for the funding of mandates on units of county and municipal government in certain defined circumstances. Section 570.265, F.S., as created in this bill, exempts all bonds and notes of the Authority from state taxation, including “. . . income, documentary stamp taxes, and intangible taxes . . . and corporate income tax under chapter 220.” A disposition of a large portion of these taxes is to units of local government where they are deposited in the Local Government Housing Trust Fund, in the case of documentary stamp taxes, or to the Revenue Sharing Trust Fund, in the case of the Intangibles Tax. Any loan activity which generates a local government tax exemption greater than \$1.4 million statewide would fall under the provisions of this constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

As discussed, above, there will be a loss of tax revenue to the State of Florida due to the exemption from taxation contained in s. 570.265, F.S., as created by the bill. The magnitude of the loss will be a function entirely of the amount of loans and notes issued, which cannot be estimated at this time.

B. Private Sector Impact:

Under the Community Reinvestment Act, lending institutions are required to make a small percentage of their lending activities available for community-based financing activities. The “aggie bond” program qualifies as part of the community based financing activity requirements under the Community Reinvestment Act, while the program also provides for collateralized/federally insured lending activities.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Summary of the Florida Private Activity Bond Allocation Act
Chapter, 159, Part VI, Florida Statutes.

The current cap in 1998, for tax-exempt Private Activity Bonds issued to the state under s. 146, Internal Revenue Code, is approximately \$733 million. On January 1, 1998, approximately \$90 million was allocated to the Manufacturing Facility Bond Pool for use statewide by manufacturing projects. The first 75% of the \$90 million is available on a first-come, first-served basis. The remaining 25% of the \$90 million is allocated based upon the decision of the Governor's Office of Tourism, Trade and Economic Development and in conjunction with the Department of Community Affairs.

After the \$90 million has been extracted from the \$733 million cap, the remaining is distributed as follows:

50% of the remaining state volume limitation is divided among 16 geographical Regional Pools (9 multi-county, 7 single county) on a per capita basis and is available on a first-come, first-served basis to any agency within each region that issues Private Activity Bonds.

25% of the remaining state volume limitation is allocated to the Florida Housing Finance Corporation (FHFC) to be used by it or assigned for multi-family and single family housing bonds.

20% of the remaining state volume limitation is allocated to the Florida First Business Allocation Pool to provide written confirmation for private activity bonds to finance Florida First Business projects certified by the Governor's Office of Tourism, Trade and Economic Development.

5% of the remaining state volume limitation is held in the state pool until March 1, during which time applications are accepted for "Priority Projects" (i.e., solid waste disposal and sewage facilities and projects located within an enterprise zone).

The Division of Bond Finance estimates that aggie bonds will get a \$10 million priority for the volume cap allocation.

The Authority is authorized to carry liability insurance on its officers and employees but the bill is unclear if this insurance is to be provided through corporate funds or through the Division of Risk Management. This is a significant issue as it will determine whether the state has waived its sovereign immunity in tort for the actions of the Authority.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
