

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Agriculture Committee

BILL: SB 1974

INTRODUCER: Senator Bennett

SUBJECT: Agriculture

DATE: March 17, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	<b>Favorable</b>
2.	_____	_____	CA	_____
3.	_____	_____	JU	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by Best Management Practices (BMPs), interim measures, or regulations. The bill provides conditions for the imposition by local governments of assessments or fees for stormwater management on land classified as agricultural if the agricultural operation has an agricultural discharge permit or implements BMPs. It allows a county to enforce its wetland protection acts adopted before January 1, 2009.

The bill creates the “Agricultural Nuisance Claim Waiver Act” which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for non agricultural land located within 1,000 feet of agricultural land, to have the permit/certificate applicant sign and submit to the political subdivision a written waiver of nuisance claims against the neighboring agricultural land, which waiver will be a public record.

The bill exempts nonresidential farm buildings and farm fences from county or municipal fees and it expands the exemption from building codes that applies to nonresidential farm buildings to include farm fences.

This bill substantially amends sections 163.3162 and 604.50 , Florida statutes. It creates section 163.3163, Florida Statutes.

**II. Present Situation:**

In 2003, the legislature passed the Agricultural Lands and Practices Act, s. 163.3162, F.S., which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy that

would limit activity of a bona fide farm or farm operation on agricultural land if such activity is regulated through BMPs, interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted restrictive measures regulating various agricultural operations in the state, which measures were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The Agricultural Land and Practices Act that banned adoption of future restrictive measures did not explicitly prohibit the enforcement of existing measures.

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue that the county generates directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit are the only ones who pay. There is a duplication of financial burden for the agricultural operation that is paying to manage its own stormwater and has to pay again for a county stormwater management program.

Section 823.14, F.S. is titled “The Florida Right to Farm Act” and has been law since 1979. In this act, the Legislature recognized the importance of agricultural production to Florida’s economy and the importance of the preservation of agriculture. It also found that agricultural activities in urban areas are potential grounds for lawsuits based on the theory of nuisance and the purpose of the Right to Farm Act was to protect reasonable agricultural activities on farm land from nuisance suits. Growers and farmers report that this act has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct their agriculture operation.

Nonresidential farm buildings have been exempt from building codes for many years. In 2001, then-Attorney General Robert A. Butterworth, in a response to the Gilchrist Assistant County Attorney (Florida Attorney General Advisory Legal Opinion, AGO 2001-71, October 10, 2001), wrote “...The plain language of sections 553.73(7)(c)<sup>1</sup> and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm...” Despite this, there have been recent instances of some counties and municipalities assessing impact fees and requiring permits for nonresidential buildings even though the buildings are exempt from building codes and are not inspected.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3162, F.S., to prohibit a county from enforcing 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, if such activity is regulated

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<sup>1</sup> The cited statute section has since changed to s. 553.73(9)(c), F.S.

by BMPs or regulations adopted as rules under chapter 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD); 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 Department of Environmental Protection.

The bill also prohibits a county from charging a fee or assessment for stormwater management on agricultural land if the farm operation has an agricultural discharge permit or has implemented BMPs adopted as rules under chapter 120, F.S., by DEP, DACS, or a WMD unless the county provides a credit for the water quality and flood control provided by the farm operation.

It allows a county to enforce its wetland protection acts adopted before January 1, 2009.

**Section 2** creates s. 163.3163, F.S., which may be cited as the Agricultural Nuisance Claim Waiver Act. The bill makes a legislative finding that nonagricultural land may have an adverse affect on neighboring agricultural land that may lead to its conversion to nonagricultural use and it declares the state's intent to make known its support for the preservation of agricultural land and farm operations. It incorporates by reference the definitions of "agricultural land" and "farm operation" used elsewhere in the statutes. The bill requires a political subdivision to condition the issuance of a permit or certificate of occupancy for nonagricultural land within 1,000 feet of agricultural land upon the political subdivision obtaining a written "Waiver of Nuisance Claims Against Neighboring Agricultural Land" which waiver should include the following acknowledgments:

- applicant's property is within 1,000 feet of agricultural land which is used for farm operations which may be incompatible with applicant's intended use.
- farm operations may cause numerous adverse effects resulting in discomfort and inconvenience in any 24-hour period.
- adverse effects include, but are not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, or operation of machinery, including aircraft.
- customary farm operations may cause adverse effects even if conducted within applicable laws and regulations.
- users of property adjoining agricultural land should accept the adverse effects of being in a rural, agricultural area.
- applicant waives any objection to the adverse effects on his property that may arise from the neighboring farm operation on the property described in the waiver.
- applicant agrees not to bring a claim against the owner of the agricultural land or the political subdivision where it is located based on the farm operation being a nuisance.
- the waiver is a public record.

**Section 3** amends s. 604.50, F.S., to expand the building code exemption for farm buildings to specifically include farm fences and to exempt both farm buildings and farm fences from county or municipal fees.

**Section 4** provides that this act shall take effect July 1, 2009.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Article VII, section 18(b) of the Florida constitution reads “Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.” Because the bill appears to restrict the authority for local government to raise revenue by prohibiting them from imposing a fee or assessment for stormwater management on agricultural lands under certain conditions and by exempting farm buildings and farm fences from any county or municipal fee, it should require a two-thirds vote to be enacted. The Revenue Estimating Conference has not yet determined if the fiscal impact is significant or if an exemption to the mandate provision applies.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

See comments in Private Sector and Government Sector.

**B. Private Sector Impact:**

The bill would relieve an agricultural landowner from being assessed a stormwater fee or an impact fee for a farm building or farm fence. The amount of these fees is indeterminate at this time.

**C. Government Sector Impact:**

The bill would prohibit counties from imposing fees on an agricultural landowner for stormwater management under certain conditions and from imposing fees for a farm building or farm fence. The amount of these fees is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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