

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 Agriculture

SPONSOR(S): Albritton and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Filaroski	Blalock
2) Finance & Tax Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution authorizes land to be classified by law as “agricultural” and to be assessed “solely on the basis of its character and use” for ad valorem taxation purposes, as opposed to an assessment based on the “highest and best use,” which is required for most property. To implement the Florida Constitution, current law provides that land may be classified as “agricultural” if it is used for “bona fide agricultural purposes.” Additionally, the law allows land in a citrus quarantine or eradication program to continue to be classified as agricultural, and, in some cases, to be assessed at a de minimis value not to exceed \$50 per acre.

Generally speaking, dispersed water storage programs are public-private partnerships between land owners and water management districts (or the Department of Environmental Protection) created to store water on private lands for use in times of drought and to help reduce nutrient pollution by preventing nutrient-rich excess water from flowing into natural waterbodies.

Under current law, Florida counties and municipalities are authorized to charge specifically enumerated discretionary sales surtaxes, also referred to as local option taxes, which provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The bill amends current law to allow agricultural lands participating in a dispersed water storage program to continue to be classified as agricultural lands for ad valorem taxation purposes and requires these lands to be assessed at a de minimis value.

The bill revises current law to expand existing sales tax exemptions and create new exemptions for items used in agricultural production as follows:

- Expands the current tax exemption on the sale, rental, lease, use, or storage of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products to include the repair of and replacement parts and accessories for such equipment.
- Expands the current definition of "agricultural production" to include the storage of plants and animals useful to humans, the effect of which is to create a new tax exemption on the sale, rental, lease, use, storage, or repair of power farm equipment, including replacement parts and accessories, used exclusively on a farm or in a forest to store crops or products.
- Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of irrigation equipment, including replacement parts and accessories, used exclusively on a farm or in a forest in the agricultural production of crops or products.
- Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of trailers, including replacement parts and accessories, used in agricultural production and the transportation of farm products from the farm to the first point of sale.

The bill appears to have a negative fiscal impact on state and local government revenues resulting from the sales tax exemptions expanded or created in the bill, and may have a negative fiscal impact on local governments as a result of the requirement to continue an agricultural classification on lands participating in a dispersed water storage program. As a result of these revisions, the bill appears to have a positive fiscal impact on the private sector. However, the Revenue Estimating Conference has not determined the magnitude of the bill's fiscal impact on state, local governments, or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Greenbelt Classification

The Florida Constitution states that all property must be given a just valuation for ad valorem taxation purposes, as prescribed by general law.¹ The Florida Constitution also requires ad valorem taxation to be at a uniform rate, but provides that property “may be [taxed] at different rates but shall never exceed two mills on the dollar of assessed value.”² In addition, property owned by a municipality that is used for municipal or public purposes is exempt from ad valorem taxation.³ In setting a just valuation on a piece of property for ad valorem taxation purposes, the property appraiser must consider the following:

- The present cash value of the property;
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;
- The location of the property;
- The quantity or size of the property;
- The cost of said property and the present replacement value of any improvements therein;
- The condition of the property;
- The income from the property; and
- The net proceeds of the sale of the property.⁴

However, the Florida Constitution also authorizes the Legislature to enact a “greenbelt classification” by law, which provides that “agricultural land . . . may be classified by general law and assessed solely on the basis of character or use.”⁵ Pursuant to this constitutional authority, the Florida Legislature enacted s. 193.461, F.S.,⁶ which implements the constitutional provision and requires the local property appraiser, on an annual basis, to “classify for assessment purposes all lands within the county as either agricultural or nonagricultural.”⁷ Agricultural lands are to be “only those lands that are used primarily for bona fide agricultural purposes.”⁸ The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land.⁹ To determine whether the use of the land for agricultural purposes is bona fide, the following factors must be considered by the property appraiser:

- The length of time the land has been used for agricultural purposes;
- Whether the use has been continuous;
- The purchase price paid;
- Size (as it relates to agricultural use, though a minimum acreage may not be required);
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;
- Whether the land is under lease; and
- Other factors that may become applicable.¹⁰

¹ Art. VII, s. 4, Florida Constitution.

² Art. VII, s. 2, Florida Constitution.

³ Art. VII, s. 3(a), Florida Constitution.

⁴ s. 193.011, F.S.

⁵ Art. VII, s. 4(a), Florida Constitution.

⁶ Originally s. 193.201, F.S. (1959), ch. 59-226, s. 1, L.O.F.

⁷ s. 193.461(1), F.S.

⁸ s. 193.461(3)(b), F.S.

⁹ *Id.* “Agricultural purposes” include, but are not limited to, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture, aquaculture, sod farming, and “all forms of farm products . . . and farm production.” s. 193.461(5), F.S.

¹⁰ s. 193.461(3)(b)1, F.S.

After property is classified as agricultural lands, the property's value is assessed based solely on its agricultural use.¹¹ This valuation is determined by the property appraiser using only the following factors:

- The quantity and size of the property;
- The condition of the property;
- The present market value of the property as agricultural land;
- The income produced by the property;
- The productivity of land in its present use;
- The economic merchantability of the agricultural product; and
- Such other agricultural factors that may be applicable.¹²

In 2000, the Legislature amended s. 193.461, F.S., to assist farmers whose lands were taken out of production by a state or federal citrus eradication or quarantine program.¹³ The law was passed after the Department of Agriculture and Consumer Services (DACS) implemented an eradication and quarantine program in January 2000 to eliminate the citrus canker disease that was ravaging the Florida citrus crop.¹⁴ The eradication policy mandated the removal of any infected trees and other citrus trees within a 1,900-foot radius of an infected tree in both residential areas and commercial groves.

Section 193.461, F.S., requires lands classified for assessment purposes as agricultural lands that are taken out of production by any state or federal eradication or quarantine program to continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs that are converted to fallow or otherwise non-income producing uses must continue to be classified as agricultural lands and be assessed at a de minimis value of no more than \$50 per acre, on a single year assessment methodology, unless the land is converted to other income-producing agricultural uses. The eradication program ended in January 2006 following a statement by the United States Department of Agriculture (USDA) that eradication was infeasible, which was accompanied by a subsequent withdrawal of funding by the USDA.¹⁵ The individual citrus canker quarantine programs have also been eliminated.¹⁶

Dispersed Water Storage Programs

In an effort to increase water supplies and improve water quality, some water management districts (WMDs) have established dispersed water storage programs. These programs are typically public-private partnerships between an agricultural landowner and a WMD where the private landowner allows agricultural land to be used by the WMD to store water during wet periods. A common reason for establishing one of these programs is to set up a water retention system.

Water retention systems typically serve to control stormwater runoff before it is discharged to surface waters and to minimize point source and non-point source pollution prior to entry into receiving water bodies.¹⁷ An example of such a program is the Florida Ranchlands Environmental Services Project sponsored by the South Florida Water Management District (SFWMD), which ran from 2006 to 2011.¹⁸ This program, which involved the participation of eight ranchers, "paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters."¹⁹

¹¹ s. 193.461(6)(a), F.S.

¹² *Id.*

¹³ Ch. 00-308, s. 3, L.O.F.

¹⁴ See *Eradication*, UF/IFAS EXTENSION, available at <http://www.crec.ifas.ufl.edu/extension/canker/eradication.shtml>.

¹⁵ *Citrus Canker Fact Sheet*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, available at <http://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Pests-Diseases/Citrus-Health-Response-Program/Citrus-Canker/Citrus-Canker-FAQs>.

¹⁶ *Id.*

¹⁷ Kevin Bouffard, *Pilot Program Helps Ranchers Build Water Retention Areas on Their Property*, THE LEDGER (Sept. 14, 2013), available at <http://www.theledger.com/article/20130914/NEWS/130919452?template=printpicart>.

¹⁸ *Id.*

¹⁹ *Id.*

In 2013, the SFWMD also invested \$3 million in a water farming pilot project that will pay citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries.²⁰ In total, the SFWMD (where such programs are concentrated) has implemented eighteen dispersed water management projects on private lands, which are listed in the following table:²¹

Project Name	Average Annual Retention/Storage (ac-ft/yr)	Project Area (acres)	Annual Payments to Landowner	Length of Agreement	Total Cost at End of Agreement
West Waterhole Pasture	5,000	2,370	\$493,750	Year 8 of 8	\$2,661,414
Rafter T Ranch	1,145	5,172	\$92,490	Year 7 of 9	\$986,464
Syfrett Ranch West (Non-Operational)	(140)	529	\$41,000	3 Years	\$183,500
Payne and Sons	932	432	\$61,133	3 Years	\$298,489
Williamson Cattle Company	150	242	\$70,000	3 Years	\$275,000
Alderman-Deloney Ranch	147	170	\$25,000	Year 3 of 10	\$253,272
Buck Island Ranch	1,573	1,048	\$173,600	Year 3 of 10	\$1,737,928
Dixie West	315	1,495	\$51,500	Year 2 of 10	\$522,228
Dixie Ranch	856	3,771	\$146,500	Year 2 of 10	\$1,482,015
Lost Oak Ranch	374	1,832	\$55,000	Year 1 of 10	\$611,030
Triple A Ranch (Under Construction)	397	106	\$28,500	Year 1 of 10	\$607,186
Willaway Cattle & Sod	229	69	\$1,879	Year 1 of 10	\$344,279
XL Ranch	887	3,227	\$130,150	Year 3 of 10	\$1,353,915
Caulkins Citrus (Under Construction)	6,780	413	\$480,830	Year 1 of 3	\$1,263,636
Nicodemus Slough (Under Construction)	34,000	15,906	\$2,968,328	Year 1 of 8	\$28,646,622
Harbour Ridge	667	178	\$0	2 Years	\$89,000
Indiantown Citrus Growers Phase I and II	3,550	492	\$0	2 Years	\$267,853
Basinger Grove (Non-Operational)	(7,500)	15,000	\$0	3 Years	\$0
TOTAL	57,002	52,452	\$4,819,660		\$41,583,831

Sales Tax Exemptions

Chapter 212, F.S., contains the statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on sales or rentals of most tangible personal property,²² admissions,²³ storage,²⁴ rentals of transient accommodations,²⁵ rentals of commercial real estate,²⁶ and a limited number of services. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.²⁷ The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales and use taxes.

Section 212.055, F.S., authorizes Florida counties and municipalities to charge specifically enumerated discretionary sales surtaxes, also referred to as local option taxes, which provides potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes

²⁰ *Id.*

²¹ Of these projects, two are non-operational due to agreements ending and no conversion to other programs and three are in construction and not yet operational. See *SFWMD Dispersed Water Management Projects on Private Lands*, on file with the State Affairs Committee.

²² s. 212.05 F.S.

²³ s. 212.04, F.S.

²⁴ s. 212.06, F.S.

²⁵ s. 212.03, F.S.

²⁶ s. 212.031, F.S.

²⁷ s. 212.06(3)(a), F.S.

apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, F.S., and communications services as defined for purposes of Chapter 202, F.S.²⁸ Discretionary sales surtaxes must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.²⁹ For tangible personal property, the surtax only applies to the first \$5,000 of any single taxable item.³⁰ The following eight different types of local discretionary sales surtaxes are currently authorized by law:³¹

- Charter County Transportation System;
- Emergency Fire Rescue Services;
- Local Government Infrastructure;
- Small County;
- Indigent Care and Trauma Center;
- County Public Hospital;
- School Capital Outlay; and
- Voter-Approved Indigent Care.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Section 212.054, F.S., provides for the distribution of the proceeds from local discretionary sales surtaxes. DOR is charged with administering, collecting, and enforcing these surtaxes,³² which must be enacted by an ordinance adopted by the governing body of the county levying the surtax.³³ No initial levy or rate increase or decrease may take effect on a date other than January 1, and no levy may terminate on a day other than December 31.³⁴

The Legislature has authorized a number of exemptions to sales and use taxes throughout Chapter 212. One of these exemptions allows for a sales tax exemption on the “sale, rental, lease, use, consumption, or storage for use . . . of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products.”³⁵ “Agricultural production” is defined as “the production of plants and animals useful to humans, including the preparation, planting, cultivating, or harvesting of these products.”³⁶ Activities considered “agricultural production” under the statute include forestry, dairy production, and beekeeping.³⁷ Accordingly, all power farm equipment purchased to be used in these activities is currently exempt from the state sales tax, which also exempts this equipment from local discretionary sales surtaxes.

The law does not define the term “trailer” for purposes of sales taxes, nor does it provide a sales tax exemption for trailers. “Trailer” is defined twice in Title XXIII of the Florida Statutes (relating to motor vehicles) as “[a]ny vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle”³⁸ and as “any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.”³⁹ Additionally, Merriam-Webster’s Dictionary defines “trailer” as “a long platform or box with wheels that is pulled behind a truck or car and used to transport things” and “a

²⁸ s. 212.054(2)(a), F.S.

²⁹ 2013 Florida Tax Handbook, pg. 211.

³⁰ s. 212.054(2)(b)1., F.S.

³¹ s. 212.055, F.S.

³² s. 212.054(4)(a), F.S.

³³ s. 125.66(2)(a), F.S.

³⁴ s. 212.054(5), F.S.

³⁵ s. 212.08(3), F.S.

³⁶ s. 212.02(32), F.S.

³⁷ *Id.*

³⁸ s. 316.003(58), F.S.

³⁹ s. 320.01(4), F.S.

vehicle that can be pulled by a truck or car and that can be parked and used as an office, vacation home, etc.”⁴⁰

Effect of Proposed Changes

Greenbelt Classification

The bill requires lands already classified as agricultural that participate in a dispersed water storage program, pursuant to a contract with DEP or a WMD, to continue to be classified as agricultural for as long as the lands are included in such program or successor program. The bill also requires the lands to be assessed at a de minimis value for the single year assessment performed for ad valorem tax purposes. However, the bill does not specify a method property appraisers must use to calculate the de minimis value of such lands.

Sales Tax Exemptions

The bill amends ss. 212.02 and 212.08(3), F.S., to expand existing sales tax exemptions and create new exemptions for items used in agricultural production as follows:

1. Expands the current tax exemption on the sale, rental, lease, use, or storage of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products to include the repair of and replacement parts and accessories for such equipment.
2. Expands the current definition of "agricultural production" to include the storage of plants and animals useful to humans, the effect of which is to create a new tax exemption on the sale, rental, lease, use, storage, or repair of power farm equipment, including replacement parts and accessories, used exclusively on a farm or in a forest to store crops or products.
3. Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of irrigation equipment, including replacement parts and accessories, used exclusively on a farm or in a forest in the agricultural production of crops or products.
4. Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of trailers, including replacement parts and accessories, used in agricultural production and the transportation of farm products from the farm to the first point of sale.

By adding exemptions to the state sales tax, the bill has the effect of adding exemptions to the local discretionary sales surtaxes authorized by law.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.461, F.S., relating to the classification of agricultural lands for ad valorem tax purposes.

Section 2. Amends s. 212.02, F.S., to include “storage” within the definition of “agricultural production.”

Section 3. Amends s. 212.08, F.S., relating to sales tax exemptions for farm equipment used in agricultural production and transport.

Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill appears to have an indeterminate negative fiscal impact on state government revenues resulting from the sales tax exemptions. However, the Revenue Estimating Conference has not determined the bill’s fiscal impact on the state.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

By adding exemptions to the state sales tax, the bill has the effect of adding exemptions to local option county sales taxes. Therefore, the bill appears to have an indeterminate negative fiscal impact on local government revenues. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on local governments.

The bill's revisions to the greenbelt statute may also result in a negative fiscal impact on local government revenues by requiring property appraisers to maintain the agricultural classification for lands participating in a dispersed water storage program and requiring property appraisers to assess such lands at a de minimis value. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on local governments.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill appears to have a direct positive fiscal impact on the private sector by reducing the amount of sales tax that certain agricultural producers could be required to pay, and allowing certain property owners that participate in a dispersed water storage program to maintain their agricultural classification for property taxation purposes. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on the private sector.

D. FISCAL COMMENTS: The Revenue Estimating Conference has not determined the bill's estimated fiscal impact on the state, local governments, or the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandate provision of Art. VII, s. 18, of the Florida Constitution requiring a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate may apply because this bill adds exemptions to the state sales tax, and, thus, has the effect of adding corresponding exemptions to local option sales taxes. However, the bill may be exempt if its fiscal impact is insignificant. The Revenue Estimating Conference has not determined the magnitude of the bill's fiscal impact on local governments.

2. Other:

With respect to the classification of land as “agricultural” for taxation purposes under Art. VII, s. 4 of the Florida Constitution and s. 193.461, F.S., courts have found that “the provisions governing such a classification should be strictly construed.”⁴¹ Furthermore, in defining words or phrases that grant exemptions to taxation, “the authority [of the Legislature] is not unlimited and must be exercised in a reasonable manner.”⁴² The Florida Supreme Court has stated that “the Legislature [is] not empower[ed] . . . to depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the constitution.” Accordingly, providing in statute that agricultural lands participating in a water dispersal program must maintain their agricultural classification may implicate the provisions of Art. VII, s. 4 of the Florida Constitution. It is unclear whether a reviewing court would consider lands participating in a dispersed water storage program as “agricultural lands” if the lands are not otherwise being used for a bona fide agricultural purpose. However, Florida courts have not ruled on this specific question.

In addition, by requiring the property appraiser to assess agricultural lands participating in a dispersed water storage program at a de minimis value, courts may determine that these lands are no longer being assessed “solely on the basis of character or use,” but rather according to a different standard not articulated in the Constitution. However, Florida courts have not ruled on this specific question.

Finally, the bill also may implicate the constitutional duties of the property appraiser. The Florida Supreme Court has held that the State cannot usurp the duties of property appraisers or materially interfere with their discretion in discharging their duties.⁴³ Since it is the duty of property appraisers “to determine the fair value of all properties within the county boundaries,”⁴⁴ the State, including the Legislature and the Department of Revenue, may only “establish standard measures of valuation” to be used by the property appraisers.⁴⁵ However, the bill requires that land participating in a dispersed water program be assessed at a de minimis value.⁴⁶ It is unclear whether a reviewing court would consider this requirement a prescribed valuation rather than a measure of valuation to be used by the property appraiser. However, Florida courts have not ruled on this specific question.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1. The bill does not explicitly trigger a re-classification of property for land participating in a dispersed water storage program that is diverted to a nonagricultural use. The bill could be amended to address this issue by specifying that land diverted to nonagricultural uses must be assessed under s. 193.011, F.S. In addition, the bill does not provide a method property appraisers must use to calculate de minimis value of lands participating in a dispersed water storage program. Therefore, various property appraisers may use different methods of determining the taxable value of these lands. Both of these issues are expected to be addressed by amendment.

Section 3. The bill does not specifically define the term “trailer” for purposes of the sales tax exemption, so it may be unclear what type of equipment qualifies for the exemption. This issue is expected to be addressed by amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

⁴¹ St. Petersburg Kennel Club, Inc. v. Smith, 662 So. 2d 1270, 1271 (Fla. 2d DCA 1995).

⁴² Department of Revenue v. Florida Boaters Association, Inc., 409 So. 2d 17, 19 (Fla. 1982).

⁴³ Burns v. Butscher, 187 So. 2d 594, 596 (Fla. 1966).

⁴⁴ Spooner v. Askew, 345 So. 2d 1055, 1058 (Fla. 1976).

⁴⁵ District School Bd. of Lee Co. v. Askew, 278 So. 2d 272, 275 (Fla. 1973).

⁴⁶ But see s. 193.461(7), F.S. (“[Lands in an eradication or quarantine program] shall be assessed at a de minimus value of no more than \$50 per acre . . .”).