

The image features a woman with long brown hair, smiling and holding a small green seedling in her hands. The seedling is growing out of a mound of dark brown soil. The background is a large, circular seal of the Florida Department of Agriculture and Forestry. The seal is blue and white, with a central sunburst design. The text "FLORIDA DEPARTMENT OF AGRICULTURE AND FORESTRY" is written around the perimeter of the seal. In the center, there is a sunburst with the text "EST. 1868" above it. Below the sunburst, there is a depiction of a horse and a cow. The seal is partially obscured by the woman's hands and the seedling.

SB 1000 and other updates from FDACS

Steven Hall, FDACS General Counsel
2022 Citrus Expo



2022 Legislative Session

SB 1000- Nutrient Application Rates;
Chapter 2022-177, Laws of Florida

SB 1186 - Agritourism;
Chapter 2022-77, Laws of Florida

SB 1078 - Soil and Water Conservation Districts;
Chapter 2022-191, Laws of Florida

SB 1000 Language and Requirements

- Effective July 1, 2022. Establishes a pilot program to allow citrus producers to use site-specific nutrient management to tailor recommended nutrient application rates when it is supported by justification and recommendations from a certified professional – **Expires June 30, 2026**
- Certified Professional:
 - certified crop adviser designation issued by the American Society of Agronomy;
 - has passed the Southeast Region Certified Crop Adviser Exam;
 - holds a 4R Nutrient Management Specialty certification; **and**
 - whose credentials have been verified by the Florida Certified Crop Adviser Board.
- Recommendations must be based on documented records
- All other appropriate BMPs as identified and approved by FDACS OAWP staff in the associated NOI must continue to be properly implemented and in compliance
 - *** UF/IFAS to study the use of site-specific nutrient management for all crops and develop a report and recommendations by June 30 of each year*



SB 1000 Language and Requirements

- 576.045(4) SITE-SPECIFIC NUTRIENT MANAGEMENT.—
- (a) The use of site-specific nutrient management to tailor recommended nutrient application rates is authorized for citrus crops where site-specific nutrient management is supported by a certified professional.
- 1. When recommended nutrient application rates published by the Institute of Food and Agricultural Sciences at the University of Florida or other state universities and Florida College System institutions that have agricultural research programs are not appropriate for a specific producer due to soil conditions, disease, crop varieties, subsequent crop rotations, planting density, market requirements, or site-specific conditions, written recommendations from a certified professional may be used to tailor the recommended nutrient application rates for that producer. The determination that the published nutrient application rates are not appropriate and the recommendation for the tailoring of nutrient application rates must be documented with one or more of the following records, as appropriate: soil tests, plant tissue tests, pathology reports, yield response curves, growth records, or site-specific conditions, together with records specifying the application rate, the types or forms of nutrients used, the nutrient sources used, and the placement and timing of the nutrient sources.



SB 1000 Language and Requirements

- 576.045(4)(a) SITE-SPECIFIC NUTRIENT MANAGEMENT.—
- 1. (cont.). A producer **must retain the records for 5 years** to support the use of site-specific nutrient management.
- 2. Citrus producers using site-specific nutrient management **must be enrolled in and implementing all other best management practices** adopted by the department and **identified in the enrolled notice of intent** required under subsections (5) and (6) and s. 403.067(7)(c).
- 3. Notwithstanding any other law, **citrus producers implementing site-specific nutrient management in compliance with this section are provided a presumption of compliance with state water quality standards**, may rely on the waiver of liability in subsection (5), and may be deemed to be in compliance with s. 403.067(7)(c) and subsections (5) and (6).





- The legislature authorized a \$47M budget for the OAWP that includes nearly \$35M in Best Management Practices cost share authority. The department was successful in obtaining **10 additional OAWP staff FTE** to conduct BMP Implementation and Verification activities increasing the OAWP staff to 69 FTEs.
- Also, provided \$5M for Lake Okeechobee Ag Projects as requested.
- The Legislature also funded a Fertilizer Rate Study through FDACS Agricultural Environmental Services in the amount of \$8,763,753.



Words Matter

- The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land. s. 193.461(3)(b)
 - Determined annually by County Property Appraiser
 - Statutory factors MAY be considered
- Property classification as “agriculture” is the KEY to all the state level exemptions for agriculture operations.

“Florida Legislature Passes Legislation to Modernize Right to Farm Protections”

- Agritourism
 - “Agritourism activity” is defined (cross reference) and then included in the definition of what constitutes a “farm operation”.
 - Result is that agritourism activities receive the nuisance protections that compliant farm operations receive under the terms of the act.
- Farm Operation
 - The definition of “farm operation” is expanded to include... “the generation of noise, odors, dust, fumes, and particle emissions...”
- Nuisance
 - Creates a definition of “nuisance” that is specific to the act.



“Lawsuit Protections: Evidence Standard and Damages”

The Legislature added several provisions to the law that are described in the staff analysis as “lawsuit protections.”

- Clear and Convincing Evidence
 - Clarifies that a plaintiff must prove by “clear and convincing evidence” that the claim arises from conduct that did not comply with state or federal environmental laws, regulations, or best management practices to succeed in a nuisance action.
- One-half Mile Distance Restrictions
 - A nuisance action may not be filed against a farm operation unless the ***real property*** affected by the alleged nuisance condition is located within one-half mile of the source of the activity or structure which is alleged to be a nuisance.



“Lawsuit Protections: Evidence Standard and Damages”

- **Compensatory Damages**
 - If a plaintiff prevails in a private nuisance action against a farm operation, the measure of compensatory damages is limited to the reduction in the fair market value of the plaintiff’s property caused by the nuisance. Damages may not exceed the fair market value of the property.
- **Punitive Damages - A plaintiff may not recover punitive damages unless:**
 - The alleged nuisance is based on substantially the same conduct that resulted in a criminal conviction or a civil enforcement action by a state or federal environmental regulatory agency; and
 - the conviction or enforcement action happened within 3 years of the first act forming the basis of the current nuisance action.
- **Costs and Expenses Awarded Against a Plaintiff**
 - A plaintiff that loses a nuisance action against a farm operation is liable to the farm for all costs and expenses incurred in defending the action.

Agritourism - Recent Revisions

Chapter 2022-77, Laws of Florida

- Effective July 1, 2022
- Removes a requirement that agritourism be a secondary stream of revenue for a bona fide agricultural operation.
- Clarifies that an agricultural land classification may not be denied or revoked solely due to the conduct of agritourism on a bona fide farm or due to the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities.
- The buildings, structures, or facilities must be an integral part of the agricultural operation.

Agritourism

Sections 570.85 -570.89, Florida Statutes

- First adopted in 2013
- “**Agritourism activity**” means any agricultural related activity consistent with a **bona fide farm, livestock operation, or ranch or in a working forest** which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended *primarily* to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity. s. 570.86(1)

Agritourism

Sections 570.85 -570.89, Florida Statutes

- Amended by SB 1186; Chapter 2022-77, Laws of Florida
- Local Government Limitations
- 570.85 Agritourism— (1) It is the intent of the Legislature to promote agritourism as a way to support bona fide agricultural production by **providing a secondary stream of revenue** and by **educating the general public** about the agricultural industry. It is also the intent of the Legislature to eliminate duplication of regulatory authority over agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other provision of law, **a local government may not adopt or enforce a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land** under s. 193.461. This subsection **DOES NOT LIMIT THE POWERS AND DUTIES OF A LOCAL GOVERNMENT TO ADDRESS SUBSTANTIAL OFFSITE IMPACTS OF AGRITOURISM ACTIVITIES OR AN EMERGENCY** as provided in chapter 252. s. 570.86(1)
- Fire Marshal Regulations Ch. 69A-67, FAC

Agritourism

Sections 570.85 -570.89, Florida Statutes

- Amended by SB 1186; Chapter 2022-77, Laws of Florida
- 570.87 Agritourism participation impact on land classification. – (1) In order to promote and perpetuate agriculture throughout this state, farm operations are encouraged to engage in agritourism. An agricultural classification pursuant to s. 193.461 **may not be denied or revoked solely due to the conduct of agritourism activity on a bona fide farm or the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities.** So long as the building, structure, or facility is **an integral part of the agricultural operation**, the land it occupies shall be considered agricultural in nature. However, such buildings, structures, and facilities, and other improvements on the land, must be assessed under s. 193.011 at their just value and added to the agriculturally assessed value of the land.

Agritourism Case Law

- Nipper v. Walton County, Florida, 208 So. 3d 331, 332 (Fla. 1st DCA 2017)
- Landowners brought action for declaration they were permitted to operate a skydiving business on their farm and county cross-claimed for an injunction. Landowners argued the skydiving was an agritourism activity because it was a “package activity” and the skydivers observe the farm.
- **Held:** The court found that the primary purpose of the business was to skydive and that skydiving is not “an activity contemplated within the plain language of the Florida statute that deals with agritourism activity.” Court also found operation of the skydiving business did not clearly violate county zoning code, and thus the county could not show a clear legal right to an injunction. This point did not hinge on the agritourism question.

Agritourism Real World Examples

Offsite Impacts

“U” Pick and Barn Friends

Wedding Venues

RV Parks

Exotic Animals

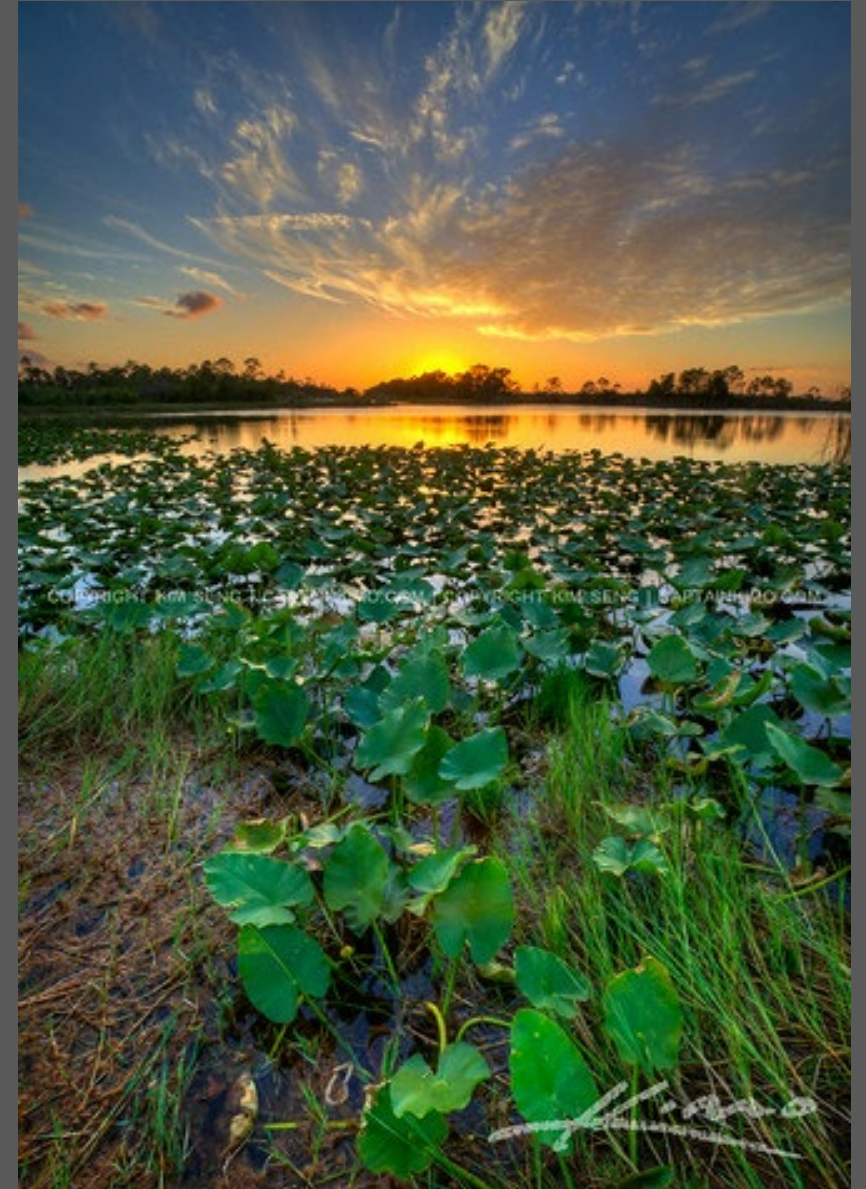
ATV tracks

Concerts

Medieval Fairs

SB 1078 – What is a Soil and Water Conservation District?

- Independently elected Boards (56 Active Districts)
- Composed of elected “Supervisors”
- Chapter 582, Florida Statutes, controls
- Purpose – “provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.”
- Broad powers and duties – s. 582.20, F.S.



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SB 1078 - Soil and Water Conservation Districts; Chapter 2022- 191, Laws of Florida

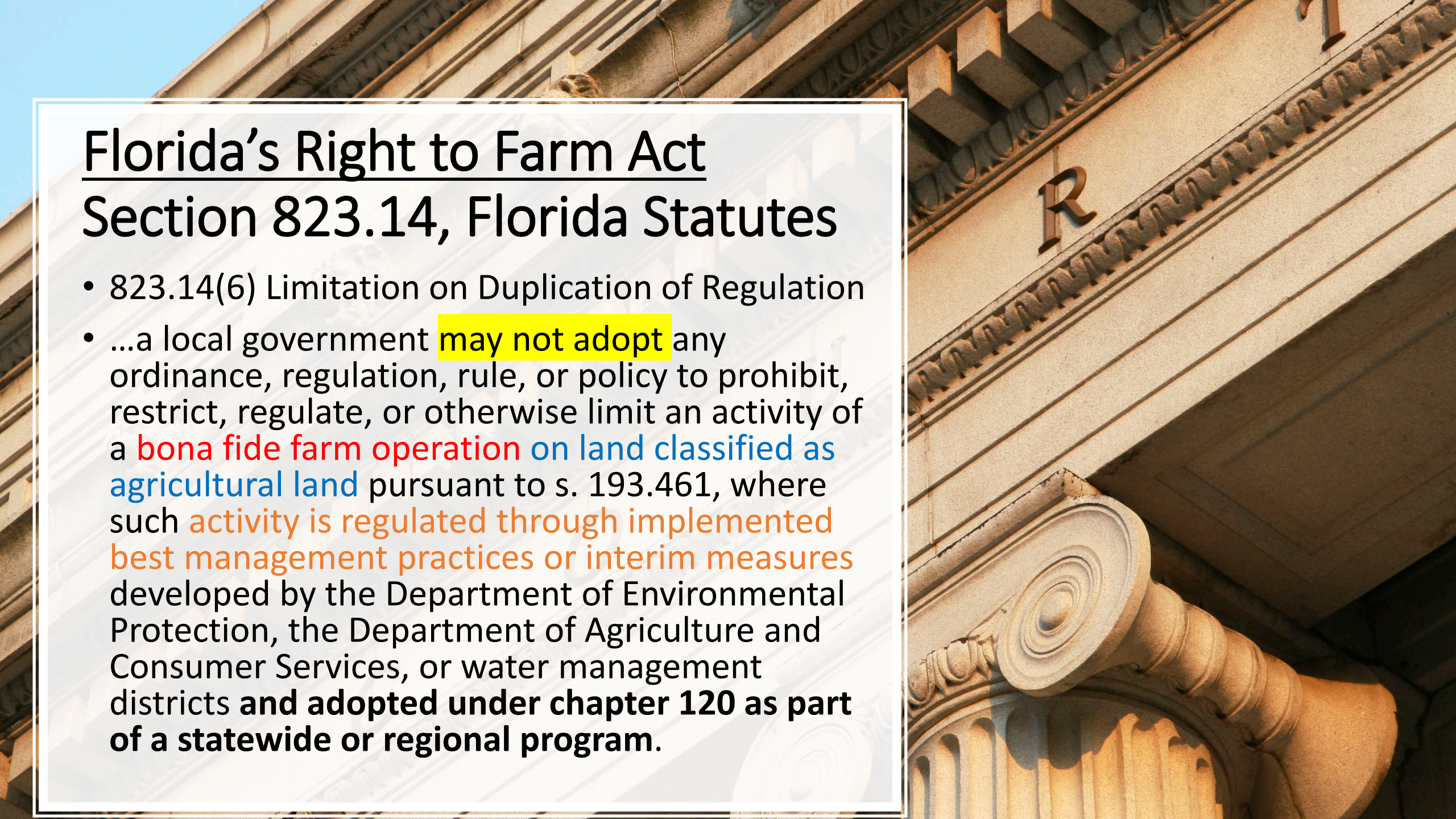
- Section 1 – “Redistricting”
 - FDACS to divide each District into 5 subdistricts using County Commission or School Board districts where possible (OAWP rulemaking imminent)
- Section 2 – From elected at-large to by subdistrict
- Section 3 – New Election Qualifications for Supervisors (sworn statement upon filing to run for office)
 - actively engaged in, or retired after 10 years of being engaged in, agriculture as defined in s. 570.02 Florida Statutes
 - employed by an agricultural producer
 - own, lease, or am actively employed on land classified as agriculture under s.193.461 Florida Statutes
- Section 4 – Each district (with all 5 Supervisors) to meet at least once annually
- Section 5 - Failure to meet = Automatic dissolution
- Section 6 – Baker and Martin County Districts are dissolved
- Section 7 – All Supervisors must stand for election in 2022; new districts and terms for following elections

Florida's Right to Farm Act

Section 823.14, Florida Statutes

- Enacted in 1979
- It protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.
- A farm operation cannot be classified as a public or private nuisance if the farm:
 - Has been in operation for 1 year or more since its established date of operation;
 - Was not a nuisance when it was established; and
 - Conforms to generally accepted agricultural and management practices.





Florida's Right to Farm Act

Section 823.14, Florida Statutes

- 823.14(6) Limitation on Duplication of Regulation
- ...a local government **may not adopt** any ordinance, 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, where such **activity is regulated through implemented best management practices or interim measures** developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts **and adopted under chapter 120 as part of a statewide or regional program.**

Agricultural Lands and Practices Act

- Section 163.3162, F.S. - Duplication of Regulation Preemption
- A governmental entity 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 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 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.

Agricultural Lands and Practices Act

First adopted in 2003

(3)(b) – No fees

(3)(c) – No stormwater management fees

Other Exceptions

Takeaway – “Adopt” vs “Adopt or Enforce” See [Wilson v. Palm Beach County, 62 So. 3d 1247, 1252 \(2011\).](#)

Words Matter

- “**Agriculture**” means the science and art of production of plants and animals useful to humans...and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production. s. 570.02(1)
- “**Farm**” means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products. s. 823.14(3)(b)
- “**Farm operation**” means all conditions or activities ... which occur on a farm in connection with the production of farm, honeybee, or apiculture products or in connection with complementary agritourism activities. These conditions and activities include, but are not limited to, the marketing of farm products at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, fumes, and particle emissions; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; agritourism activities; and the employment and use of labor. s. 823.14(3)(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. s. 823.14(3)(d)

Section 604.50, Florida Statutes

Nonresidential farm buildings; farm fences; farm signs.

- First adopted in 1998
- “...any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes, not including those lands used for urban agriculture, **is exempt** from the Florida Building Code (See also s. 553.73) and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.
- “Nonresidential farm building” means:
 - 1 - any temporary or permanent building or support structure
 - 2a - that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) **or**
 - 2b - that is used **primarily for agricultural purposes**,
 - 3a - is located on land that is an **integral** part of a farm operation **or**
 - 3b - is **classified as agricultural land** under s. 193.461,
 - 4 - **and** is not intended to be used as a residential dwelling.
 - 5 - The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 604.50, Florida Statutes

CASE LAW!

- 14269 BT LLC v. Vill. of Wellington (2018)
 - Horse Farm cited for various violations including no building permits for barns, storage building, and manure bin (also other issues)
 - 4th DCA - barns, storage building, and manure bin, were exempt from village's zoning regulations, under Section 604.50 F.S.
 - Plain language of 604.50(1), nonresidential farm buildings are exempt from "any county or municipal code or fee." Legislature's 2011 amendment to this section indicates an intent to expand the exemption to include any county or municipal code rather than merely including county or municipal building codes.
 - Supreme Court declined to accept jurisdiction
- AGO's similar result

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