

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 Committee on Community Affairs

BILL: SB 628

INTRODUCER: Senator Rouson

SUBJECT: Urban Agriculture

DATE: March 15, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Argote</u> | <u>Becker</u> | <u>AG</u> | Favorable |
| 2. | <u>Hackett</u> | <u>Ryon</u> | <u>CA</u> | Pre-meeting |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 628 exempts farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located at least 50 feet away from a public road. The bill does not exempt nonresidential farm buildings, fences, or signs located on lands used for urban agriculture from the Florida Building Code or local governmental regulations.

The bill defines “urban agriculture” and provides applicability.

The bill expressly preserves local governmental authority to regulate urban agriculture under certain circumstances.

The bill takes effect July 1, 2021.

II. Present Situation:

Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.¹ This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponic facilities (e.g., growing fish and

¹ Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited March 2, 2021).

plants together in an integrated system).² Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.³ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.⁴

The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables with each other.⁵ Profitability is not necessarily the goal of community-based urban agriculture;⁶ instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.⁷

“Right to Farm” Laws; Generally

In the 1970s, states began to identify the potential conflicts between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in a rash of very expensive nuisance lawsuits once the new neighbors were confronted with the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other side-effects.⁸

In an effort to protect farms and agricultural operations from the encroaching sprawl, states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, enacted in all 50 states, protect agricultural production against some nuisance lawsuits. The laws do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. These laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”⁹ The Florida Right to Farm Act was enacted in 1979.¹⁰

² *Id.*

³ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁴ Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), United States Department of Agriculture/Agricultural Marketing Service and Cornell University Small Farms Program.

⁵ *Id.*

⁶ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁷ Vitiello, D. and Wolf-Powers, L, *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523.

⁸ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

⁹ *Id.*

¹⁰ Chapter 79-61, ss. 1-2, Laws of Fla.

Nuisance

A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person's use or enjoyment of their property. A private nuisance affects a person's private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.¹¹

The Florida Right to Farm Act

The Florida Right to Farm Act protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.¹²

The Florida Right to Farm Act states that 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.¹³

However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies.
- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.¹⁴

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change:

- In ownership,
- In the type of farm product that is produced,
- In conditions in or around the locality of the farm, or
- Made in compliance with Best Management Practices adopted by local, state, or federal agencies.¹⁵

¹¹ BLACK'S LAW DICTIONARY (11th ed. 2019).

¹² Section 823.14, F.S.

¹³ Section 823.14(4)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 823.14(4)(b), F.S.

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business.^{16,17}

The Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁸

The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.

III. Effect of Proposed Changes:

Section 1 amends s. 604.40, F.S., to exempt farm equipment used in urban agriculture from the requirement that farm equipment be stored, maintained, or repaired within the boundaries of the owner’s farm and kept at least 50 feet away from any public road without limitation.

Section 2 amends s. 604.50, F.S., to provide that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

Section 3 creates s. 604.73, F.S., to be known as the “Florida Urban Agriculture Act.”

The bill specifies the following legislative findings and intent related to urban agriculture:

- It is necessary to distinguish between farms on traditional rural farm land and those of urban agriculture due to the application of laws related to agricultural activities.
- It is acknowledged that the “coming to the nuisance” defense is reversed when residents bring agricultural uses to already-established, dense urbanized areas, and that municipalities should retain the right to reasonably regulate urban agriculture to protect existing urban land uses.
- It is recognized that urban agriculture has the ability to spur economic development by providing for fresh foods in city centers, community revitalization, and the adaptive reuse of vacant lands.

¹⁶ Section 823.14(5), F.S.

¹⁷ In an effort to eliminate duplication of regulatory authority over farm operations, local governments may not adopt an ordinance or similar policy to prohibit or limit an activity of a bona fide farm operation on land that is classified as agricultural land in accordance with statute, where the activity is regulated through implemented best management practices or certain interim measures. The full text of this prohibition is contained in s. 823.14(6), F.S.

¹⁸ See s. 553.72(1), F.S.

- It is intended that local governments retain authority to regulate urban agriculture under certain conditions in order to further the growth of farmland and promote the establishment of new farms and agricultural uses within dense urbanized land areas.

The bill defines “urban agriculture.” The term applies to urban land that is not designated or zoned for agriculture as a principal use. The term does not apply to vegetable gardens for personal consumption on residential properties.

The bill provides that urban agriculture is subject to the land use, building, and other regulations of a county, municipality, or other political subdivision of the state, regardless of the property’s agricultural classification where:

- There is a land use or zoning regulation duly enacted to allow for urban agriculture; and
- The regulation designates existing farm operations as legally nonconforming before the regulation’s adoption.

Section 4 provides that this bill shall take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 604.40 and 604.50 of the Florida Statutes.
This bill creates section 604.73 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.