

Florida Right-to-Farm Act: Sword and Shield



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Background

- Right to Farm Laws have been enacted in all fifty states.
- All Right to Farm Laws attempt to remedy farm-non-farm conflicts.
- The specific provisions in Right to Farm Laws vary from state to state.
- Right to Farm Laws generally limit nuisance lawsuits against agricultural operations.

Background: Nuisance Law

- Landowner cannot use land in a manner that unreasonably interferes with another landowner's use of land.
- Determination of nuisance balances the benefit of use against the harm caused by use.

Background: Nuisance Law

- Private Nuisance interferes with rights of individual.
- Public Nuisance interferes with rights of community.
- Determination of a nuisance is a highly fact-specific determination.

Background: Nuisance Law

“Coming to the Nuisance” Defense

Under this doctrine people and land uses moving toward an offensive activity are prevented from using nuisance law to defend themselves from the existing offensive external effects.

Right to Farm Laws: Why?

Right to Farm Laws originally designed to protect agricultural operations existing within a state by allowing owners and operators a defense to nuisance suits which may be brought against the operation.

Originally developed in the 1970's as state lawmakers were becoming more aware of and concerned about the loss of agricultural land.

Right to Farm Laws: Why?

- Urban encroachment into traditional agricultural areas
- Losses of agricultural lands were a result of conflicts between agricultural uses and non-agricultural uses
- Nuisance Lawsuits resulted in court action which:
 - Closed the operation
 - Altered the way it conducted business
 - Assessed penalties to compensate the neighboring landowner

Florida Right to Farm Act (FRTFA)

- In 1979, the Florida Right To Farm Act was enacted by the Legislature to prevent burdensome lawsuits against farmers which were intended to cease or curtail farm operations and which discouraged investments in farm improvements

Florida Right to Farm Act (FRTFA)

F.S. 823.14, Florida Right to Farm Act.--

(2) LEGISLATIVE FINDINGS AND PURPOSE.--The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The Legislature further finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farm land from nuisance suits.

Florida Right to Farm Act (FRTFA)

F.S. 823.14, Florida Right to Farm Act.—

(4) FARM OPERATION NOT TO BE OR BECOME A NUISANCE.—

(a) No farm operation which has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.....

(b) No farm operation shall become a public or private nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for 1 year or more since its established date of operation and if it was not a nuisance at the time of its established date....

Florida Right to Farm Act (FRTFA)

F.S. 823.14, Florida Right to Farm Act.—

- (5) WHEN EXPANSION OF OPERATION NOT PERMITTED.--This act shall not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.

Florida Right to Farm Act (FRTFA)

F.S. 823.14, Florida Right to Farm Act.—

- (6) **LIMITATION ON DUPLICATION OF GOVERNMENT REGULATION.**--It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, 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.....

(FRTFA) Recap

- Restricts nuisance suits against farmers by providing that farm operations which have been in operation for 1 yr or more since they were started, and which were not nuisances when they were established, will not constitute a public or private nuisance if the operation conforms to generally accepted agricultural and management practices.
- The provisions of FRTFA are not affected by change of ownership, changes in farm product(s) being produced, changes in the conditions in or around the locality of the farm, or those changes brought by compliance with the Best Management Practices (BMPs) adopted by local, state, or federal agencies.

Florida Right to Farm Act (FRTFA)

- Provides that local governments may not adopt any rules or ordinances which restrict or limit a bona fide farming activity that is conducted on agricultural lands in accordance with BMPs.
- Expansion of farm operations within the original boundaries of the farm, and expansion of the farms land boundaries do not strip the farm operation of its previous date of operation
- Prohibits an existing farm operation from changing to a more excessive farm operation with regard to noise, odor, dust, or fumes where the farm operation is adjacent to an established residence or business.

“Bona Fide Farm Operation”

Assuming that a property holds an agricultural classification and is subject to state or regional regulation, it must also be a *“bona fide farm operation”* in order to claim protection from local regulation under the Right to Farm Act. Legislative definitions and intent establish what is a “bona fide farm operation” entitled to the Right to Farm Act exemption.

For purposes of the Act, a “farm” is defined as the *“land, buildings, support structures, machinery, and other appurtenances used in the production of farm or aquaculture products.”* Section 823.14(3)(a), Florida Statutes

“Bona Fide Farm Operation”

“Farm operation” is further defined as “all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.”

Section 823.14(3)(b), Florida Statutes.

Non-Residential Farm Buildings Exempt From Building Code

Section 604.50, Florida Statutes, reads as follows:

Notwithstanding any other law to the contrary, **any nonresidential farm building is exempt from the Florida Building Code and any county or municipal building code.** For purposes of this section, the term "nonresidential farm building" means any building or support structure that is used for agricultural purposes, is located on a farm that is not used as a residential dwelling, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461. The term "farm" is as defined in s. 823.14.

Does the Zoning Regulation Interfere with the Agricultural Activity to the Point that the Statute Prohibits It?

AGO 2001-71

May the county require a zoning compliance permit under its land development regulations for non-residential farm buildings?

The Attorney General analyzed the plain meaning of the statutory provisions, and concluded that “*the prohibition against local ordinances that limit or restrict an activity of a bona fide farm operation on land that is classified as agricultural would not preclude an application of zoning regulations that do **not** have such an intent or effect.*”

Zoning Regulations

- Therefore, local government enforcement of general zoning regulations, such as setback requirements, against nonresidential farm buildings is valid as long as such regulation does not restrict or hinder the farm activity itself.
- No additional caselaw or definite guidance exists with regard to the determination of whether a regulation interferes with or hinders agricultural activity. Whether a regulation in fact hinders an agricultural activity is a factual interpretation that must be made by examining the specific circumstances of each case.

Zoning Regulations

AGO 2009-26

Does the county have the authority to enforce its zoning regulations regarding the construction of the building on land classified as agriculture if those regulations do not limit the operational activity of the bona fide farm operation?

Yes. A non-residential farm building would be subject to a zoning compliance permit to the extent such a permitting requirement does not prohibit, restrict, regulate, or otherwise limit an activity of the farm.

Recently Proposed Legislation

(HB 1133 and identical SB 1974)

05/02/09 SENATE Indefinitely postponed and withdrawn from consideration; Died in Messages

Addresses various issues relating to agriculture.

- The bill prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs)

Recently Proposed Legislation

- The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to January 1, 2009, are not limited by the provisions of the bill.
- The bill creates the “Agricultural Land Acknowledgement Act” (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring agricultural land. The bill provides that the acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale.

Recently Proposed Legislation

- The bill exempts farm fences from the Florida Building Code, and **exempts** farm fences and nonresidential farm buildings **from county or municipal codes and fees**, except for code provisions implementing local, state, or federal floodplain management regulations.

Florida Right to Farm Act (FRTFA)

Municipal

County

Florida Farm Bureau

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Questions and Answers

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