

Akerman Practice Update

ENVIRONMENT & NATURAL RESOURCES

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Florida's 2011 Legislative Session: Tracking Fertilizer and Agriculture

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Florida's 2011 Legislative Session is shaping up to provide agricultural interests with sweeping regulatory relief. Akerman is currently tracking legislation that includes the centralized agency review of fertilizer management, agricultural exemptions from water management requirements, prohibitions on county-imposed stormwater fees and assessments, and enhanced protection of agriculture practices.

HB 457 and SB 606: Grant of Exclusive Jurisdiction to DACS to Regulate Fertilizer

In order to streamline regulation, the proposed legislation grants the Florida Department of Agriculture and Consumer Services (DACS) with the exclusive authority to regulate fertilizer, including its sale, composition, formulation, packaging, use, application, and distribution.

HB 421 and SB 1174: Agricultural-Related Exemptions from Environmental Permitting Requirements and Exclusive Jurisdiction to DACS to Make Exemption-Determination

Current law provides an agriculture exemption, which allows persons engaged in certain agricultural occupations (farming, silviculture, floriculture, and horticulture) to alter the topography of any tract of land without obtaining an environmental resource permit from a water management district. The



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exemption applies to site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, construction of access roads, and placement of bridges and culverts.

In recent litigation, an agricultural company filed suit claiming that its alterations impacting wetlands were exempt from environmental permitting requirements. The water management district disagreed and argued that the agricultural exemption didn't apply. The court ruled against the agricultural company and held that the exemption did not apply to the alterations impacting wetlands.

The proposed legislation revises the agricultural exemption to specify that certain agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, as long as it (the activity) is not the sole or predominant purpose of the said activity or alteration. A retroactive application of the exemption to July 1, 1984 is provided. The proposed legislation also allows a water management district or landowner to request a determination from DACS when a dispute regarding an exemption occurs and establishes that the determination by DACS is binding.

HB 707 and SB 858: Prohibition on County-Imposed Stormwater Fees or Assessments on Agricultural Land & Added Protections to Agricultural Practices

On March 24, 2011, the Florida House and Senate approved Veto Override of 2010 HB 7103 to protect agriculture. Identical legislation had been filed during the 2011 Session (HB 707 and SB 858). Key highlights under HB 7103 include:

- prohibits counties from enforcing any regulations on land classified as agriculture if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under Chapter 120, Florida Statutes
- prohibits counties from imposing an assessment or fee for stormwater management on land classified as agriculture if the operation has an NPDES permit, ERP, a works-of-the-district permit, or implements best management practices
- creates the 'Agricultural Land Acknowledgement Act' to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land
- requires an applicant for certain local government development permits to sign and submit an acknowledgement of certain contiguous sustainable agricultural lands as a conditions of the local government issuing the development permit

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- exempts farm fences from the Florida Building Code and expands the definition of non-residential farm buildings that are exempt from local government codes and fees.

For more information, please contact a member of our Environment & Natural Resources practice.

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