



*Jill Rowland*

***Bill Analysis***  
*Legislative Service Commission*

## **H.B. 404**

123rd General Assembly  
(As Introduced)

**Reps. Krebs, Logan, Brading, D. Miller, Mottley, Terwilleger, Opfer,  
Krupinski, Bender**

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### **BILL SUMMARY**

- Requires administrative departments of the state to act to preserve farmland when possible and feasible.
- Makes the following changes in the law regarding the current agricultural use valuation (CAUV) of land under the Real Estate Assessment Law:

(1) Changes the criteria that must be satisfied in order to have land taxed in accordance with its CAUV by revising the minimum acreage requirement from at least ten acres to at least 20 acres, but retains the former acreage requirement for land that qualified for CAUV prior to the bill's effective date if it continues to satisfy all other criteria;

(2) Increases from three to six years the period for which a recoupment charge must be paid when land taxed in accordance with its CAUV is converted from an exclusively agricultural use;

(3) Defines "certified well-planned county" and allows such a county to use a portion of any recoupment charges that are collected in the county to fund farmland preservation activities;

(4) Provides that if a county is not a certified well-planned county, a portion of recoupment charges that are collected in that county must be deposited in the Agricultural Easement Purchase Fund;

(5) Modifies requirements concerning who must pay the recoupment charge.

- Defines "agricultural security area" and prohibits any public or private entity from appropriating farmland in such an area unless prior written notice is given to the Director of Agriculture.
- Changes the minimum acreage requirement for the placement of land in an agricultural district from at least ten acres to at least 20 acres.
- Specifies that an agricultural district established prior to the bill's effective date that consisted of less than ten acres will continue as a district as long as all other agricultural district requirements, other than acreage requirements, are met.
- With respect to the penalty for withdrawing land from an agricultural district, specifies that a county auditor must divide the entire parcel of land at issue into economic units and assess the withdrawal penalty only on that portion of the parcel that is withdrawn from the district.
- Applies the penalty for withdrawing land from an agricultural district to public entities or to private entities granted the power of eminent domain that acquire the land by any means, but exempts park districts and other public entities from the withdrawal penalty under certain circumstances.
- Expands current exemptions from special assessments for sewer, water, and electrical service for land included in an agricultural district to include exemptions from special assessments for roads, highways, and streets.
- Alters current appropriation requirements by specifying that a public or private agency must notify the Department of Agriculture when appropriating more than five acres or 5% of an individual property under one ownership and currently used in agricultural production in an agricultural district, whichever is less, instead of ten acres or 10% respectively, whichever is greater.
- Alters certain notification and other procedural requirements pertaining to the appropriation of property in an agricultural district.
- Allows a board of county commissioners to prohibit, by resolution, the installation and operation of household sewage disposal systems in certain areas and to adopt rules for that purpose.

- Allows a board of county commissioners to determine whether minerals may be extracted from land in the county that is subject to an agricultural easement.

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## CONTENT AND OPERATION

### *Preservation of farmland by state administrative departments*

The bill requires administrative departments of the state, in developing programs and policies, making decisions, or taking any action that may affect farmland, to act to preserve farmland whenever possible unless overriding reasons related to economic development or public health prevent them from doing so.<sup>1</sup>

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<sup>1</sup> *The administrative departments of the state include the following: the Department of Agriculture, the Office of Budget and Management, the Department of Commerce, the Department of Administrative Services, the Department of Transportation, the Department of Natural Resources, the Department of Health, the Department of Human Services, the Department of Public Safety, the Department of Mental Health, the Department of Mental Retardation and Developmental Disabilities, the Department of Insurance, the Department of Development, the Department of Youth Services, the Department of Rehabilitation and Correction, the Environmental Protection Agency, the Department of Aging, and the Department of Alcohol and Drug Addiction Services.*

Each department must adopt guidelines to assist it in determining whether those overriding reasons exist. The bill specifies that a decision relating to compliance with the requirement is not an adjudication for purposes of the Administrative Procedure Act nor is it the basis for a cause of action to stop the funding or implementation of a project that a department will undertake or has undertaken. (Sec. 901.56.)

### **Changes in current agricultural use valuation (CAUV) for real property taxation**

#### **Definition of "land devoted exclusively to agricultural use"**

Under the Real Estate Tax Assessment Law, owners of farmland with a market value that exceeds its agricultural use value may apply each year to have the agricultural use value, rather than the market value, serve as the basis on which the land is taxed. This valuation is referred to as the current agricultural use valuation (CAUV) and results in tax savings for the owner of the farmland. The county auditor determines whether an applicant's land qualifies for this favorable treatment as "land devoted exclusively to agricultural use." (Sec. 5713.31.)

Under existing law, property that so qualifies includes all of the following: (1) parcels of land of *at least ten acres* that were used exclusively, for three calendar years prior to the year in which the application is filed and through May of the year of application, for specified agriculture-related purposes or that were qualified for compensation under a land retirement or conservation program under an agreement with a federal agency, (2) parcels of land of *less than ten acres* that, for three calendar years prior to the year in which the application is filed and through May of the application year, were qualified for compensation under a land retirement or conservation program under an agreement with an agency of the federal government or were used exclusively for commercial animal or poultry husbandry, aquaculture, apiculture, or the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least \$2,500 or where there is evidence of an anticipated gross income of that amount from such activities during the tax year in which the application is made, and (3) tracts, lots, or parcels of land or portions of them that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but that have been lying idle or fallow for up to one year, provided that no action has occurred to the land that is inconsistent with its return to agricultural production or that converts the land devoted exclusively to agricultural use.<sup>2</sup> A tract, lot, or parcel of land that is taxed under the law

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<sup>2</sup> *The specified agriculture-related purposes include commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber,*

governing taxation of forest lands is not land devoted exclusively to agricultural use. (Sec. 5713.30(A).)

The bill revises the first two descriptions of what constitutes land devoted exclusively to agricultural use. It provides that land described in (1) above must total at least 20 acres rather than at least ten acres. Land described in (2) above must total less than 20 acres instead of less than ten acres, and if the land is devoted exclusively to one of the agricultural uses listed above that produces at least \$2,500, that income must be reported on the applicant's IRS return. (Sec. 5713.30(A).) However, the bill provides that land that was determined to be land devoted exclusively to agricultural use by a county auditor prior to the bill's effective date and that consisted of at least ten acres will continue to be land devoted exclusively to agricultural use until the land fails to comply with any qualification, other than required acreage, that is specified in the definition of "land devoted exclusively to agricultural use" as long as the owner of the land continues to comply with renewal application requirements (sec. 5713.31(E)).

As evidence that the applicant's land produces at least \$2,500 as required in (2) above, the bill requires the applicant to submit to the county auditor a copy of IRS Schedule F in addition to the application and any required fee (sec. 5713.31(A)). If the applicant fails to file the application and, if applicable, IRS Schedule F by the specified deadline, the county auditor must notify the person who failed to file the application that unless those items are filed with the auditor prior to the first Monday in April of the current year, the land will be valued for real property tax purposes in the current tax year at its true value in money and the person will be required to pay a "recoupment" charge as described below (sec. 5713.31(B)).

**"Recoupment" charge when land is converted from exclusively agricultural use**

**Increase in recoupment period.** Under existing law, the tax savings for CAUV properties is noted in the agricultural land tax list, which shows the annual taxable value of the property both under CAUV and its market value. If all or any portion of land valued under CAUV is converted from land devoted exclusively to agricultural use, a portion of the tax savings is recouped by levying a charge against the land equal to the amount of that savings for the previous three tax years. The bill increases the charge by providing for the recoupment of the tax

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*field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that otherwise is devoted exclusively to agricultural use.*

savings for the previous six tax years rather than just for the previous three tax years. (Sec. 5713.34(A)(1).)<sup>3</sup>

**Recoupment in certified well-planned county.** Under the bill, the question of whether a county qualifies as a "certified well-planned county" determines where a portion of any revenue collected through recoupment charges will be deposited and what it will be used for. The bill defines "certified well-planned county" as a county in which the board of county commissioners adopts, by resolution, a comprehensive plan under existing law for regulating building and land use through zoning in the unincorporated territory of the county, provided that the comprehensive plan does all of the following:

(1) Creates agricultural security areas, which the bill defines as areas of farmland that are placed in an agricultural district pursuant to existing law, valued and assessed under CAUV for real property tax purposes, and located within a district zoned for agriculture or agricultural supportive use (sec. 5713.30(E));<sup>4</sup>

(2) Designates the area or areas of unincorporated territory of the county where household sewage disposal systems are prohibited in accordance with rules adopted by the board of county commissioners through a resolution in accordance with the bill's provisions;<sup>5</sup> and

(3) Specifies whether minerals may be extracted under the bill's provisions from land that is subject to an agricultural easement. (Sec. 5713.30(F).)<sup>6</sup>

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<sup>3</sup> "Conversion of land devoted exclusively to agricultural use" includes all of the following: (1) the failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application for CAUV without good cause, (2) the failure of the new owner of such land to file an initial application without good cause, (3) the failure of such land or portion thereof to qualify as "land devoted exclusively to agricultural use" for the current calendar year as requested by an application for CAUV, and (4) the failure of the owner of land that qualifies for CAUV and has been lying fallow to act on the land in a manner that is consistent with the return of the land to agricultural production after three years (sec. 5713.30(B)).

<sup>4</sup> For an explanation of agricultural districts, see "**Agricultural districts.**" below.

<sup>5</sup> For further explanation, see "**Resolution prohibiting installation of household sewage disposal systems.**" below.

<sup>6</sup> For further explanation, see "**Extraction of minerals from land subject to an agricultural easement.**" below.

The bill specifies that if a county is a certified well-planned county, any recoupment charge levied under the bill for years four, five, and six immediately preceding the year in which a conversion of land devoted exclusively to agricultural use occurs must be paid into the county treasury of that county to the credit of the general county fund. The county may use those moneys for no longer than five years after becoming a certified well-planned county to pay administrative and nonadministrative costs associated with farmland preservation activities. Thereafter, those moneys only are permitted to be used to pay the nonadministrative costs of such activities. (Sec. 5713.341(A).)

If a county is not a certified well-planned county, the bill specifies that any recoupment charge levied for years four, five, and six immediately preceding the year in which a conversion occurs must be deposited in the Agricultural Easement Purchase Fund created under existing law (sec. 5713.341(B)). The Fund must be used exclusively to purchase agricultural easements on land that is valued at CAUV and to provide matching grants to municipal corporations, counties, townships, and charitable organizations for the purchase of agricultural easements (sec. 901.21(E)).<sup>7</sup>

**Who pays recoupment charge.** Current law states that, with certain exceptions, a public entity that acquires by any means and converts land devoted exclusively to agricultural use and a private entity granted the power of eminent domain that acquires by any means and converts such land must pay the recoupment charge and is prohibited from, transferring the charge, directly or indirectly, to the person from whom the land is acquired. A person injured by a violation of that provision may recover, in a civil action, any damages resulting from the violation. (Sec. 5713.34(B)(1).)

The bill makes several changes in that provision. Instead of requiring private entities to pay the recoupment charge only if they have been granted the power of eminent domain and acquire by any means and convert land devoted exclusively to agricultural use, the bill requires any private entity that acquires by any means and converts such land to pay the recoupment charge regardless of whether the private entity has the power of eminent domain. In addition, the bill specifies that the recoupment charge must be paid when all or any portion of a

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<sup>7</sup> "Agricultural easement" is defined in existing law as an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of the creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions (sec. 5301.67(C)).

tract, lot, or parcel of land devoted exclusively to agricultural use is converted. The bill also specifies that the transferor and transferee of such land that is acquired and converted may, through a written agreement, "opt out" of the requirement that the transferee who converts the land must pay the recoupment charge. (Sec. 5713.34(B)(1).)

### **Eminent domain**

The bill prohibits any public or private agency from appropriating farmland in an agricultural security area without providing written notice of the proposed appropriation to the Director of Agriculture not fewer than 30 days prior to the commencement of appropriation proceedings under the law governing eminent domain (sec. 5713.34(B)(2)).<sup>8</sup>

### **Agricultural districts**

Current law authorizes a person who owns agricultural land to file an application with the county auditor to place the land in an agricultural district, provided that the land and the activities conducted on the land satisfy certain requirements (sec. 929.02(A)). Lands that are included in an agricultural district receive certain exemptions from special assessments by public entities for sewer, water, or electrical service (sec. 929.03(A)) and, provided that certain other criteria are satisfied, receive a complete defense in a civil action for nuisances pertaining to agricultural activities conducted on the land (sec. 929.04, not in the bill). The law also establishes restrictions on public and private agencies when appropriating land in agricultural districts (sec. 929.05).

### **Minimum acreage requirement for land in agricultural district**

Under existing law, land is placed in an agricultural district for a period of five years after which the owner of the land must file a new application. Land is eligible for such placement if, during the three calendar years prior to the year in which the owner files an application, the land has been devoted exclusively to agricultural production or devoted to and qualified for payments or other compensations under a land retirement or conservation program under an agreement with a federal agency. Further, current law provides that the land must

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<sup>8</sup> For a definition of "agricultural security area," see "**Recoupment in certified well-planned county**," above. "Public agency" means any governmental corporation, unit, organization, or officer authorized by law to appropriate property in Ohio courts. "Private agency" means any other corporation, firm, partnership, voluntary association, joint-stock association, or company authorized by law to appropriate property in Ohio courts. (Sec. 163.01, not in the bill.)

be composed of tracts, lots, or parcels that total not less than ten acres or either the activities conducted on the land must have produced an average yearly gross income of at least \$2,500 during the three-year period of agricultural production or the owner must have evidence of an anticipated gross income of that amount from those activities. (Sec. 929.02(A).)

The bill increases the amount of acreage that a person must own in order to be eligible to place the land in an agricultural district from at least ten acres to at least 20 acres (sec. 929.02(A)(1)). However, the bill provides that an agricultural district that has been established prior to the bill's effective date and that consisted of less than ten acres will continue as a district until the district fails to comply with the requirements, other than required acreage, of the agricultural district statutes. Nothing in the bill exempts the owner of the land in such a district from complying with the renewal requirements of those statutes. (Sec. 929.02(G).)

**Penalty for withdrawing land from agricultural district**

Current law provides that if, at any time during which land is in an agricultural district, the owner withdraws the land from the district, the owner must notify the county auditor of the withdrawal and pay to the county auditor a withdrawal penalty calculated as follows:

(1) If the owner's action also disqualifies the land for any tax savings that it had been receiving under CAUV, the owner must pay a percentage of the amount charged under real property tax law for recoument of taxes resulting from the conversion of land devoted to agricultural use to nonagricultural use that is equal to the average bank prime rate at the time that the amount charged is required to be paid. The withdrawal penalty is in addition to the amount charged under that law.

(2) If the land had not been receiving any tax savings under CAUV, or if the owner's action does not disqualify the land for those tax savings, the owner must pay a percentage of the amount that would have been charged under real property tax law if the owner's land had been receiving tax savings under CAUV and became disqualified for them in an amount that is equal to the average bank prime rate at the time the amount that would have been charged under that law would have been required to be paid. (Sec. 929.02(D).)

The bill specifies that for purposes of assessing a withdrawal penalty, the county auditor must divide "any numbered permanent parcel" into economic units and value each unit individually for the purpose of assessing the penalty only on that portion of a tract, lot, or parcel that the owner withdraws from the district. The bill contemplates that the owner adequately describe to the auditor that portion of the tract, lot, or parcel of land that is withdrawn. (Sec. 929.02(D).)

**Withdrawal penalty for public or private entities acquiring land in agricultural district**

The bill also provides that except as discussed below, a public entity, or a private entity granted the power of eminent domain, that acquires land by any means and withdraws it from an agricultural district must pay the withdrawal penalty specified above and cannot transfer it, directly or indirectly, to the person from whom the land is acquired. A person injured by a violation of this provision may recover, in a civil action, any damages resulting from the violation. (Sec. 929.021(A).)

The bill specifies that the withdrawal penalty does not apply to the withdrawal of land acquired by a public entity by means other than eminent domain and thereafter used exclusively for a public purpose that leaves the land principally undeveloped if: (1) in the case of a park district that acquires the land and withdraws it from an agricultural district, the land is located within the boundaries of the park district, or (2) in the case of a public entity other than a park district that acquires the land and withdraws it from an agricultural district, the land is located within the boundaries of any city, local, exempted village, or joint vocational school district that is wholly or partially located within the boundaries of the public entity that so acquires and withdraws the land. However, if all or any portion of a tract, lot, or parcel of such land is later developed, the withdrawal penalty must be levied against the land as otherwise required. (Sec. 929.021(B).)

The bill apparently allows the transfer of the withdrawal penalty by a public entity that acquires land by means other than eminent domain, withdraws it from an agricultural district, and thereafter uses it exclusively for a public purpose that leaves it principally undeveloped if: (1) in the case of a park district that acquires the land and withdraws it from an agricultural district, the land is located outside the boundaries of the park district, or (2) in the case of a public entity other than a park district that acquires the land and withdraws it from an agricultural district, the land is located within the boundaries of any city, local, exempted village, or joint vocational school district that is wholly or partially located within the boundaries of the public entity that so acquires and withdraws the land (sec. 929.021(C)).

The bill requires the county auditor of the county in which the land is located to determine annually whether all or any portion of a tract, lot, or parcel of land that was withdrawn from an agricultural district and used exclusively for a public purpose that left the land principally undeveloped subsequently has been developed in a way or converted to a purpose that requires the withdrawal penalty to be levied against the land so developed or converted (sec. 929.021(B)).

For the above purposes, the bill defines "principally undeveloped" to mean the use of a parcel of real property for public outdoor education, recreation, or similar open space uses, provided that the parcel contains only the structures, roadways, and other facilities that are necessary for such uses, and "public entity" to mean any political subdivision or any agency or instrumentality of a political subdivision (sec. 929.021(D)).

**Exemption from special assessments for land in agricultural district**

Under current law, with certain exceptions, no public entity with authority to levy special assessments on real property can collect an assessment for purposes of sewer, water, or electrical service on real property that is within an agricultural district without the permission of the owner. The bill expands this exemption against special assessments for land included in an agricultural district to assessments for roads, highways, or streets. (Sec. 929.03(A)(1).)

Further, current law provides that if at any time any of the owner's exempt land is withdrawn from an agricultural district or if the owner of the exempt land uses on that land the service for which a special assessment was assessed, a public entity may collect the entire uncollected assessment in addition to an amount equal to the rate of interest that any bonds or notes issued for the project for which the assessment was made bore for the number of years the land was exempted, not to exceed 25 or the number of years for which the bonds or notes were issued, whichever is less.<sup>9</sup> The bill authorizes a public entity only to collect the portion of the uncollected assessment that applies to the portion of land on which the owner used the service or on which is located the section of the road, highway, or street that was used and a proportionate amount equal to the interest payments related to that portion of land. (Sec. 929.03(C).)

Under existing law, the owner must notify the county auditor of any withdrawal from an agricultural district or use of the service for which an assessment was made within 90 days following the withdrawal or use. The bill adds that the owner also must notify the county auditor of the use of a road, street, or highway for which special assessments were levied. (Sec. 929.03(C).)

Current law states that if the owner of exempt land sells or transfers a lot to the owner's son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years,

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<sup>9</sup> *The required payment of uncollected assessments does not apply if the land is sold or transferred to a son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years (sec. 929.03(C)).*

and if the owner or the buyer of the lot uses the service for which the special assessment was levied only for the purposes of that lot, the owner of the lot must pay only that portion of the uncollected assessment and interest that applies to the lot. Similarly, the bill adds that if the owner or the buyer of the lot uses the road, highway, or street for which the special assessments were levied only for the purposes of that lot, the owner must pay only the portion of the uncollected assessment and interest that applies to the lot. (Sec. 929.03(C).)

Under current law, if at any time any part of an owner's exempt land is appropriated, the owner must pay that portion of the uncollected assessment and interest that applies to the appropriated parcel of land. The bill instead requires the appropriating entity to pay. (Sec. 929.03(C).)

### **Eminent domain in agricultural district**

Under current law, no public or private agency is permitted to appropriate more than ten acres or 10% of an individual property under one ownership and currently used in agricultural production in an agricultural district, whichever is greater, unless notice is provided to the Department of Agriculture and certain other procedures are followed. The bill decreases the threshold number of acres to five acres and decreases the percentage of an individual property under one ownership to 5%. In addition, the bill provides that the threshold is five acres or 5% of an individual property under one ownership and currently used in agricultural production in an agricultural district, whichever is *less*. (Sec. 929.05(A).)

Under current law, a public or private agency desiring to appropriate land in an agricultural district and an agency, public entity, or person desiring to make a distribution of public funds within an agricultural district for housing or nonagricultural commercial or industrial facilities must give written notice of the intent to the Department.<sup>10</sup> Within 30 days after receiving the notice and after considering certain factors, if the Director of Agriculture has reason to believe that the proposed action would have an unreasonably adverse effect on the district or on the policies, plans, objectives, or programs of other state or local government agencies that would outweigh the protection, promotion, or enhancement of the public health, safety, peace, or welfare, the Director must inform the Governor. The Governor then must issue an order that the proposed action cannot be taken

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<sup>10</sup> *The entity or person does not have to give such notice if the entity or person has received the approval of an environmental document that includes consideration of the impact on agricultural land from an appropriate federal agency and the Department of Agriculture is listed among the agencies for coordination of the document (sec. 929.05(B)).*

for 60 days. During that 60-day period, the Director must conduct a hearing and make final findings and recommendations on the matter. The bill eliminates the requirement that the Governor be notified. Instead, the bill requires the Director to notify the agency, entity, or person seeking to appropriate the land or make the distribution, within 30 days of the Director's receipt of the written notice, that the appropriation would have an adverse effect on the district or on the policies, plans, objectives, or programs of other state or local entities. (Sec. 929.05(B).)

Existing law establishes procedures that public and private agencies must follow in order to appropriate property. Currently, the petition for appropriation must contain: (1) a description of each parcel of land or interest or right in it sought to be appropriated, (2) in the case of a private agency, a statement that the appropriation is necessary, and, in the case of a public agency, a copy of the resolution of the public agency to appropriate, (3) a statement of the purpose of the appropriation, (4) a statement of the estate or interest sought to be appropriated, (5) the names and addresses of the owners, so far as they can be ascertained, (6) a statement showing that the public or private agency is unable to agree with the owner, the owner is incapable of contracting for any reason, is unknown, or is a nonresident, or the owner's residence is unknown to the agency, and (7) a prayer for the appropriation. The bill adds that if the land to be appropriated is within an agricultural district, the petition must include a statement so indicating. (Sec. 163.05(A).) Further, the bill specifies that if the land to be appropriated is within an agricultural district, the Director of Agriculture must be made a party defendant to the appropriation proceedings (sec. 163.05(D)).

In addition, current law establishes procedures for providing notice of the filing of a petition for appropriation to the owners of the property that is the subject of the appropriation proceeding. The bill requires that if the land, or interest or right in it, to be appropriated is within an agricultural district, notice of filing of a petition must be given to the Director by serving a summons and a copy of the petition in the manner of service of summons in civil actions. (Sec. 163.07(A) and (B).) Further, the bill gives the Director the authority to file an answer to a petition for appropriation of land in an agricultural district, which may contain either a general denial or a specific denial of each material allegation not admitted (sec. 163.08).

### **Prohibition of installation of household sewage disposal systems**

Under the bill, a board of county commissioners may adopt a resolution prohibiting the installation and operation of household sewage disposal systems in the area or areas of the unincorporated territory of the county that are designated in the resolution (sec. 307.061(A)). "Household sewage disposal system" is defined to mean a complete sewage disposal system, other than a disposal system for

which a permit is required under the Water Pollution Control Law, that is installed on a single parcel of land for use at a single-family, two-family, or three-family dwelling and that receives sewage for treatment and ultimate disposal (sec. 307.061(C)(1)).

For the purpose of prohibiting household sewage disposal systems, a board of county commissioners may adopt rules that establish all of the following: (1) scientific criteria for the identification of an area or areas in which the installation and operation of household sewage disposal systems should be prohibited due to soil conditions or other physical characteristics that make the operation of household sewage disposal systems unacceptable in that area, (2) procedures for the designation of such an area or areas, including, without limitation, public notice and hearings, (3) criteria and procedures for the establishment of limited exceptions to the prohibition against installing and operating household sewage disposal systems in a designated area or areas, and (4) areas that reasonably can be served, within a time period specified by the board, by a sewerage system for which plan approval is required under the Water Pollution Control Law (sec. 307.061(B)).<sup>11</sup>

The bill specifies that a resolution or rules concerning the prohibition of household sewage disposal systems that are adopted under the bill will not apply to a household sewage disposal system in existence, or for which an installation permit has been issued by a board of health, prior to the adoption of the resolution (sec. 307.061(D)).

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<sup>11</sup> Existing law defines "sewerage system" as pipelines or conduits, pumping stations, and force mains and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment, excluding plumbing fixtures, building drains and subdrains, building sewers, and building storm sewers (sec. 6111.01(E), not in the bill).

*Under existing law, plan approvals are required for sewerage and treatment works for sewage of a municipal corporation or part thereof, an unincorporated community, a county sewer district, or other land outside a municipal corporation or any publicly or privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation, education, correction, hospitalization, housing, or employment of persons. Plan approvals are not required for sewerage or treatment works for sewage installed or to be installed for the use of a private residence or dwelling or for certain small scale animal waste treatment or disposal works and related management and conservation practices. (Sec. 6111.44, not in the bill.)*

**Extraction of minerals from land subject to agricultural easement**

Under the bill, a board of county commissioners, as part of a comprehensive plan that may be adopted under existing law for regulating building and land use through zoning in the unincorporated territory of the county, may determine whether minerals may be extracted from land that is subject to an agricultural easement (sec. 5301.693).<sup>12</sup> "Minerals" means sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or other material or substance of commercial value excavated in a solid state from natural deposits on or in the earth, but does not include coal or peat (sec. 1514.01(B), not in the bill, and sec. 5301.67(D)).

The bill specifies that if the board determines that minerals may not be extracted from land that is subject to an agricultural easement, the board must provide written notice to the Chief of the Division of Mines and Reclamation in the Department of Natural Resources within 30 days of the board's determination (sec. 5301.693). The bill prohibits the Chief from issuing a permit for surface mining on any land for which the Chief has received such a written notice (sec. 1514.022).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	06-29-99	p. 1119

H0404-I.123/rss

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<sup>12</sup> For a definition of "agricultural easement," see "**Recoupment in certified well-planned county**," above.