

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**AGRICULTURE**  
**Senator Siplin, Chair**  
**Senator Bullard, Vice Chair**

**MEETING DATE:** Monday, March 21, 2011

**TIME:** 10:15 a.m.—12:15 p.m.

**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Siplin, Chair; Senator Bullard, Vice Chair; Senators Alexander, Garcia, Hays, Montford, and Simmons

| TAB | BILL NO. and INTRODUCER                       | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION |
|-----|---|---|------------------|
| 1   | Florida Future Farmers of America             |   |                  |
| 2   | <b>SB 1246</b><br>Norman                      | Farms; Prohibits a person from entering onto a farm or photographing or video recording a farm without the owner's written consent. Provides a definition. Provides penalties.<br><br>AG 03/21/2011<br>CJ<br>BC   |                  |
| 3   | <b>SB 1284</b><br>Bennett                     | Biodiesel; Exempts certain biodiesel manufacturers from bonding requirements. Exempts certain biodiesel manufacturers from specific taxes on diesel fuel. Redefines the term "pollutants" to exclude certain biodiesel. Provides legislative findings regarding the sale of diesel containing biodiesel. Establishes standards for the amount of biodiesel that must be contained in diesel fuel. Requires dealers and wholesalers to provide certified fuel analyses upon the department's request, etc.<br><br>AG 03/21/2011<br>CM<br>BC  |                  |
| 4   | <b>SB 1174</b><br>Siplin<br>(Identical H 421) | Exemptions to Water Management Requirements; Revises an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands. Provides for retroactive application of the exemption. Provides exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions. Requires a specified memorandum of agreement between the department and each water management district. Authorizes the department to adopt rules, etc.<br><br>AG 03/21/2011<br>EP<br>BC |                  |

**COMMITTEE MEETING EXPANDED AGENDA**

Agriculture

Monday, March 21, 2011, 10:15 a.m.—12:15 p.m.

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION |
|-----|--|--|------------------|
| 5   | <b>SB 1290</b><br>Dean<br>(Identical H 949)  | <p>Pest Control; Provides rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means. Increases the minimum bodily injury and property damage insurance coverage required for pest control businesses. Provides for the certification of commercial wildlife trappers. Increases the minimum financial responsibility requirements for licensees that perform certain inspections, etc.</p> <p>AG      03/21/2011<br/>EP<br/>BC</p> |                  |
| 6   | Discussion regarding potential options for transfer of School Nutrition Program from the Department of Education to the Department of Agriculture and Consumer Services. |  |                  |

**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.)

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Prepared By: The Professional Staff of the Agriculture Committee

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BILL: SB 1246

INTRODUCER: Senator Norman

SUBJECT: Farms

DATE: March 8, 2011

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Looke   | Spalla         | AG        | <b>Pre-meeting</b> |
| 2. |         |                | CJ        |                    |
| 3. |         |                | BC        |                    |
| 4. |         |                |           |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

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**I. Summary:**

This bill makes it a first degree felony to enter onto, photograph, videotape, or otherwise produce images or pictorial records of a farm, or other property where legitimate agriculture operations are occurring, without the written consent of the owner. This bill also defines a “farm” as “any tract of land cultivated for the purpose of agricultural production, the raising and breeding of animals, or the storage of a commodity.”

This bill creates a new unnumbered section of the Florida Statutes.

**II. Present Situation:**

Chapter 810 of the Florida Statutes provides various penalties for trespassing ranging from a first degree felony to a third degree misdemeanor.

Presently, certain animal rights groups attempt to expose what they consider to be animal abuse on America’s farms and processing facilities by trespassing on those facilities, either under the cover of darkness or by other surreptitious means such as posing as potential employees, and taking hidden camera footage of those facilities. This footage is compiled and uploaded to their various websites and used for documentary films which are adversarial to the animal farming business. Examples of this type of investigation are present in the anti-factory farm campaigns of many organizations such as the Humane Society of the United States which sent an undercover investigator into a Cal-Maine egg farm in Waelder, Texas under the pretext of working for the

farm for 28 days<sup>1</sup>, and the group Mercy for Animals which claims that while “[w]ired with hidden cameras, [their] team of undercover investigators documents the harsh realities of industrial animal agriculture.”<sup>2</sup>

### III. Effect of Proposed Changes:

**Section 1** makes it a first degree felony to enter onto, photograph, videotape, or otherwise produce images or pictorial records of a farm, or other property where legitimate agriculture operations are occurring, without the written consent of the owner. This section also defines a “farm” as “any tract of land cultivated for the purpose of agricultural production, the raising and breeding of animals, or the storage of a commodity.”

**Section 2** creates an effective date of July 1, 2011.

#### Other Potential Implications:

This bill does not take into account the intent of any violators of the statute nor does it create any exemptions such as for emergency response personnel, those touring a farm or those trespassing on a farm unintentionally.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

There may be potential First Amendment issues with the bill as written because the bill does not require that the offender actually be on private property to be guilty of photographing, etc., without the written consent of the owner.

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<sup>1</sup>*Appalling Animal Abuse and Food Safety Threats at Top Egg Producer*, The Humane Society of the United States, November 17, 2010, found at [http://www.humanesociety.org/news/press\\_releases/2010/11/cal-maine\\_111710.html](http://www.humanesociety.org/news/press_releases/2010/11/cal-maine_111710.html) (last visited on March 8, 2011).

<sup>2</sup> *Undercover Investigation: Exposing Animal Abuse*, Mercy for Animals, found at <http://www.mercyforanimals.org/investigations.aspx> (last visited on March 8, 2011)

**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. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. (1) Any person, except an employee or agent of  
the Department of Agriculture and Consumer Services acting  
pursuant to s. 570.15, Florida Statutes, or a law enforcement  
officer conducting a lawful inspection or investigation, who  
enters onto a farm or other property where legal agriculture  
operations are being conducted and produces audio or video  
records without the written consent of the owner or an  
authorized representative of the owner, commits a felony of the  
first degree, punishable as provided in s. 775.082, s. 775.083,



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or s. 775.084, Florida Statutes.

(2) As used in this section, the term:

(a) "Audio or video records" means any audio or video recording, regardless of the recording medium or format, including, but not limited to, photographs, audio or videotapes, cd's, dvd's, or streaming media, whether stored on film stock, hard disks, solid state storage, or any electrical, magnetic, or optical or other form of data storage.

(b) "Farm" means any tract of land cultivated for the purpose of agricultural production, the raising and breeding of domestic animals, or the storage of a commodity.

Section 2. This act shall take effect July 1, 2011.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to farms; prohibiting a person from entering onto a farm and making any audio record, photograph, or video record at the farm without the owner's written consent; providing exceptions; providing definitions; providing penalties; providing an effective date.

**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.)

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Prepared By: The Professional Staff of the Agriculture Committee

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BILL: SB 1284

INTRODUCER: Senator Bennett

SUBJECT: Biodiesel

DATE: March 17, 2011

REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|--------------|----------------|-----------|--------------------|
| 1. | Weidenbenner | Spalla         | AG        | <b>Pre-meeting</b> |
| 2. |              |                | CM        |                    |
| 3. |              |                | BC        |                    |
| 4. |              |                |           |                    |
| 5. |              |                |           |                    |
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**I. Summary:**

This bill provides incentives to promote the growth of a biodiesel industry by eliminating a bond requirement, certain motor fuel taxes, and permits for cultivating nonnative plants. It requires diesel fuel to contain a minimum 2 percent of biodiesel effective December 31, 2011 and provides guidelines for that percentage to be increased to 5 percent. It provides reporting requirements to the Department of Agriculture and Consumer Services (DACS). It extends statutory provisions making it unlawful to sell or distribute gasoline that doesn't meet state standards to apply to the sale or distribution of diesel. It makes a legislative finding about the importance of including a certain percentage of biodiesel in diesel sold in the state.

This bill substantially amends the following sections of the Florida Statutes: 206.02, 206.874, 206.9925, 526.202, 526.203, 526.205, and 581.083.

**II. Present Situation:**

All biodiesel manufacturers are required to post a bond with the Department of Revenue (DOR) in the approximate amount of the average monthly tax levied on the operation not to exceed \$100,000 to assure compliance with tax reporting and payment requirements. Currently, only a secondary school that manufactures less than 1,000 gallons of biodiesel fuel annually is exempt from the tax levied on diesel fuel.

Pollutants are subject to an excise tax under Part IV, Chapter 206 (Motor and Other Fuel Taxes) unless exempt under s. 206.9941, F.S. Biodiesel is not exempt nor is it excluded in the definition of "Pollutants" in s. 206.9925, F.S.



The Florida Renewable Fuel Standard Act, ss 526.201-526.207, F.S., (act) contains a legislative finding that it is vital to the public interest and the state's economy to require that all gasoline sold in the state contain a percentage of agriculturally derived, denatured ethanol. This finding does not include biodiesel fuel. The act also requires that all gasoline sold in Florida beginning December 31, 2010 be a blended gasoline which means it must contain a mixture of gasoline and ethanol. There is no similar standard requiring biodiesel to be blended with diesel fuel. There are provisions in the act that make it unlawful to sell gasoline that fails to meet the requirements of the act, but there is no similar language for diesel.

Section 581.03, F.S., requires a special permit be obtained from DACS through the Division of Plant Industry to cultivate a nonnative plant, including a genetically engineered plant for the purposes of fuel production or purposes other than agriculture. A condition of obtaining this permit is that the permitholder must maintain a bond or certificate of deposit in an amount not less than 150 percent of the estimated cost of removing and destroying the cultivated plants in the event eradication is necessary with a maximum bond or certificate of deposit amount capped at \$5,000 per acre.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 206.02, F.S., to eliminate the requirement for a bond for a biodiesel manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

**Section 2** amends s. 206.874, F.S., to create an exemption from the motor fuel tax imposed by s. 206.87, F.S., for biodiesel fuel produced by a manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

**Section 3** amends s. 206.9925, F.S., to amend the definition of "Pollutants" to exclude biodiesel manufactured in this state by a manufacturer whose annual production is derived at least 50 percent from renewable feedstocks originating in Florida.

**Section 4** amends s. 526.202, F.S., to extend legislative findings concerning the importance of requiring gasoline offered for sale to contain a percentage of ethanol to include a finding that diesel offered for sale contain a percentage of biodiesel.

**Section 5** amends s. 526.203, F.S., to incorporate definitions for "Biodiesel" and "Diesel fuel" by reference to other sections of the Florida statutes. It amends statutory "Fuel Standards" to require that all diesel fuel contain at least 2 percent biodiesel effective December 31, 2011 which percentage will increase to 5 percent when the annualized capacity of biodiesel production facilities reaches 233 million gallons. It requires dealers and wholesalers to provide a certified fuel analysis of biodiesel received upon request of DACS. It provides an exemption for fuel used in gasoline-powered boats and it requires a monthly report to the DOR of gallons of diesel and biodiesel sold.

**Section 6** amends 526.205, F.S., to make it unlawful to sell or distribute diesel which fails to meet the state's requirements for the sale of liquid fuels and it provides that persons involved in

the biodiesel process may apply for an extension of time to September 30, 2011 to comply with these requirements.

**Section 7** amends s. 581.083, F.S., to eliminate the requirement to obtain a permit to cultivate a nonnative plant, including a genetically engineered plant, if it is being used for purposes of fuel production.

**Section 8** provides that this act shall take effect July 1, 2011.

**Other Potential Implications:**

DACS expresses concerns that the elimination of the permit and related bond requirements could result in the introduction and establishment of extremely invasive plants that could do untold damage to Florida's agriculture and natural resources. Several environmental groups have expressed concerns that removal of the permit requirement and DACS oversight would allow the unregulated planting of species not listed on the noxious weeds lists and elimination of the bond requirement could have a significant fiscal impact to the state if eradication needed to be undertaken. The Petroleum Council expresses concerns that the bill imposes a mandate to achieve a certain percent of biodiesel in diesel product by the end of the year which may not be able to be achieved and that federal law has standards already in effect regarding the blending of ethanol and biodiesel in motor fuels.

DOR points out that elimination of the bond to assure payment of tax for each biodiesel manufacturer that is licensed as a wholesaler which processes at least 50 percent of biodiesel production from renewable feedstocks has the effect of removing a bond requirement on the manufacturer's other products which could potentially approach 50% and would expose the state to a significant loss if the manufacturer defaults on payment of tax on products other than the exempt biodiesel.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Some person or entity could raise a commerce clause issue asserting that there is a discriminatory effect on competition between products produced in the state and products

produced outside the state. However, both in-state and out-of-state manufacturers could potentially meet the qualifications of the exemption in this bill.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

DACS estimates there would be a \$350 annual reduction in non-recurring fees because of the bill.

**B. Private Sector Impact:**

Manufacturers of biodiesel fuel and growers of renewable feedstock used for that purpose would realize financial savings of an indeterminate amount depending on their volume of production due to tax, permit, and bonding requirements being exempted by the bill.

**C. Government Sector Impact:**

DOR estimates it would incur a one-time expense of \$53,812 to implement the change in tax provisions brought about by the bill.

**VI. Technical Deficiencies:**

The bill introduces “renewable feedstocks” as a term but does not define it. DOR asserts that this would require rulemaking by the agency which could be avoided by amending the bill to define the term.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 26 and 27  
insert:

Section 1. Subsection (31) is added to section 206.01,  
Florida Statutes, to read:

206.01 Definitions.—As used in this chapter:  
(31) "Renewable feedstocks" mean crops and animal products  
that may be used to produce fuel or energy.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 2



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14 and insert:  
15 An act relating to biodiesel; amending s. 206.01,  
16 F.S.; defining the term "renewable feedstocks";  
17 amending s. 206.02,



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 193 - 381.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 19 - 23

and insert:

to comply with the requirements of the act; providing  
an effective date.

**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.)

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Prepared By: The Professional Staff of the Agriculture Committee

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BILL: SB 1174

INTRODUCER: Senator Siplin

SUBJECT: Agricultural-related Exemptions to Water Management Requirements

DATE: March 17, 2011

REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|--------------|----------------|-----------|--------------------|
| 1. | Weidenbenner | Spalla         | AG        | <b>Pre-meeting</b> |
| 2. |              |                | EP        |                    |
| 3. |              |                | BC        |                    |
| 4. |              |                |           |                    |
| 5. |              |                |           |                    |
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**I. Summary:**

This bill provides that the exemption that allows the topography of land to be altered for agricultural activities without an environmental resource permit will not be superseded by language in the Warren S. Henderson Wetlands Protection Act<sup>1</sup> (Wetlands Protection Act) so long as the alteration is not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

The bill provides that the Department of Agriculture and Consumer Services (DACS) has exclusive authority to make a binding determination as to whether an activity qualifies for an agricultural-related exemption upon request from a water management district (WMD) or a landowner. The bill gives DACS necessary rulemaking authority and requires DACS and each WMD to enter into or amend existing memorandum of agreements to implement a binding determination process.

The bill establishes circumstances under which land converted from agricultural uses will not be subject to mitigation and it redefines the definition of agricultural activities contained in the Wetlands Protection Act.

This bill substantially amends sections 373.406, 373.407, and 403.927 of the Florida Statutes.

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<sup>1</sup> Chapter 84-79, Laws of Florida.

## II. Present Situation:

Part IV of Chapter 373, F.S., addresses the management and storage of surface waters in Florida. Persons engaged in certain agricultural occupations are currently exempted from having to obtain an environmental resource permit from a WMD when altering the topography of land unless such alteration is being done for the sole or predominant purpose of impounding or obstructing surface waters.<sup>2</sup> The Wetlands Protection Act<sup>3</sup> established a permitting process for dredge and fill permits to protect and manage wetlands and it provides that agricultural activities are not subject to specific discharge permits except that the Department of Environmental Protection (DEP) may require a stormwater permit or discharge permit at the point of discharge from an agricultural water management system.

In 2009, two appellate court decisions were entered regarding a challenge by a large agricultural entity to certain rules of a WMD and its statutory interpretation of s. 373.406(2), F.S. The entity was charged with constructing numerous drainage ditches without obtaining a permit and appealed the Administrative Law Judge's (ALJ) recommended order<sup>4</sup> which was adopted by the WMD. *Duda I* addressed only the rule challenge and found in favor of the WMD. While the enforcement issue was not addressed, *Duda I* recognized that the exemption providing for the alteration of the topography of land for agriculture purposes was limited by the further statutory provision that the alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters. The WMD interpreted that to mean "that there is no exemption if the alteration of topography has the effect of more than incidentally trapping, obstructing or diverting surface waters."<sup>5</sup> After a lengthy analysis, the *Duda I* court made a finding that that such interpretation rendered the agricultural exemption in s. 373.406(2), F.S., virtually meaningless and that the ALJ had erred in accepting the WMD's erroneous interpretation<sup>6</sup> and remanded that part of the appeal for further review by the ALJ. In *Duda II*, a panel made up of different judges from the same court found that the WMD had shown sufficient evidence that wetlands had been impacted and agreed that the company had to either restore the impacted wetlands or apply for after-the-fact permits. While this was the result of the court's second opinion, the court also said that the opinion in *Duda I* did not address the interplay between s. 373.406(2), F.S., and the language in the Warren S. Henderson Wetlands Protection Act and reiterated the prior panel's finding that those provisions, read together, virtually eliminate the agricultural exemption as it applies to alterations impacting wetlands. Various persons, entities, and organizations involved in agricultural industries and occupations have expressed concerns about the practical usefulness of the agricultural exemption in s. 373.406(2), F.S., because of the conflict between the WMD's interpretation and the findings in *Duda I* and *Duda II*.

Pursuant to s. 373.407, F.S., DACS and each of the five WMD's entered into a memorandum of understanding (MOU) in 2007 which sets forth a procedure for DACS to make a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related

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<sup>2</sup> Section 373.406(2), F.S.

<sup>3</sup> Section 403.927, F.S., the remaining section of the Warren S. Henderson Wetlands Protection Act that has not been repealed.

<sup>4</sup> *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) (*Duda I*) and 22 So. 3d 622 (Fla. 5th DCA 2009) (*Duda II*).

<sup>5</sup> *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) at 741.

<sup>6</sup> *Id.* at 744.



exemption in s. 373.406(2). DACS reports that this involves a site visit, review of technical support materials and issuance of a written non-binding determination. DACS further states that only one or two requests per year are received from the WMD's and would expect that number to increase when landowners can also make a request for a binding determination.

Currently, if land served by a water management system is converted to a use other than agricultural use, that land will no longer be entitled to agricultural-related exemptions. And the definition of "Agricultural activities" contained in the Wetlands Protection Act does not include the activities of cultivating, fallowing, or leveling nor does the predominant purpose of the activity matter if the result is that it impedes or diverts the flow of surface water.

### III. Effect of Proposed Changes:

**Section 1** amends s. 373.406, F.S., to specify that, notwithstanding the provisions of s. 403.927, F.S., (Wetlands Protection Act) persons engaged in agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, so long as that is not the sole or predominate purpose of the activity or alteration of the topography. The bill provides for retroactive exemption to July 1, 1984.<sup>7</sup>

**Section 2** amends s. 373.407, F.S., to provide that a WMD or a landowner may request the DACS to make a binding determination in the event of a dispute about whether an existing or proposed activity qualifies for an agricultural-related exemption under s. 373.406(2), F.S. from having to obtain an environmental resource permit. The bill requires DACS and each WMD to enter into or amend existing memorandum of agreements to set forth how DACS will make its review and issue a binding determination. The bill further states that DACS has exclusive authority to make this binding determination and may adopt rules to implement this procedure.

**Section 3** amends s. 403.927, F.S., to provide that when land is converted to other than an agricultural use, mitigation under chapters 373 or 403, F.S., is not required to offset any adverse effects caused by agricultural activities if such activities occurred in at least 4 of the last 7 years preceding the conversion. It also redefines "Agricultural activities" to add cultivating, fallowing, and leveling to the existing list of activities and it specifies that "Agricultural activities" must not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>7</sup> The effective date of the Warren S. Henderson Wetlands Protection Act.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Potential savings of time and expense for agricultural operations that may be exempt from obtaining an environmental resource permit to alter topography.

**C. Government Sector Impact:**

DACS estimates additional staff and expense would be needed to handle the additional workload arising from requests for determination as set forth in the below table:

|               | FY 10-11    | FY 11-12    | FY 12-13    |
|---------------|-------------|-------------|-------------|
|               | Amount/FTE  | Amount/FTE  | Amount/FTE  |
| Revenues:     |             |             |             |
| Recurring     | \$175,000/2 | \$175,000/2 | \$175,000/2 |
| Non-Recurring | -0-         | -0-         | -0-         |

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Siplin) recommended the following:

**Senate Amendment**

Delete line 39

and insert:

This exemption is only applicable on lands classified as  
agricultural pursuant to s. 193.461 and to activities regulated  
pursuant to part IV, chapter 373. This exemption shall not apply  
to any activities previously authorized by an Environmental  
Resource permit or Management and Storage of Surface Water  
permit issued pursuant to part IV, chapter 373, or a Dredge and  
Fill permit issued pursuant to chapter 403.

**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.)

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Prepared By: The Professional Staff of the Agriculture Committee

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BILL: SB 1290

INTRODUCER: Senator Dean

SUBJECT: Pest Control

DATE: March 16, 2011

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|----------|----------------|-----------|--------------------|
| 1. | Akhavein | Spalla         | AG        | <b>Pre-meeting</b> |
| 2. |          |                | EP        |                    |
| 3. |          |                | BC        |                    |
| 4. |          |                |           |                    |
| 5. |          |                |           |                    |
| 6. |          |                |           |                    |

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**I. Summary:**

This bill makes changes to the Florida Structural Pest Control Act. It authorizes the Department of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee and biennial renewal fee.

The bill also establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents. The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

The bill increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992. And finally, the bill expands the methods by which a pest control licensee may contact the department regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

This bill amends sections 482.051, 482.071, and 482.226 of the Florida Statutes.

This bill creates sections 482.072 and 482.157 of the Florida Statutes.

## II. Present Situation:

In 1947, the Legislature enacted a statute known as the Structural Pest Control Act of Florida. It was believed that the persons who were engaged in the Pest Control Industry required a certain amount of regulation for the health, welfare and protection of Florida citizens.<sup>1</sup> In 1959, the Legislature enacted a new Florida Structural Pest Control Act that repealed and superseded the act of 1947.<sup>2</sup> The practice of commercial pest control in Florida continues to be strictly regulated under the provisions of the Structural Pest Control Act, Chapter 482, Florida Statutes, and Rule Chapter 5E-14, Florida Administrative Code. These regulations are administered and enforced by the Department of Agriculture and Consumer Services' Pest Control Section of the Bureau of Entomology and Pest Control.

Pest control includes one or more of the following activities:

- The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on or under a structure, lawn, or ornamental;
- The identification of or inspection for infestations or infections in, on or under a structure, lawn or ornamental;
- The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on or under a structure, lawn, or ornamental;
- All phases of structural fumigation (includes boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers); and
- The advertisement of, the solicitation of, or the acceptance of remuneration for any work, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.<sup>3</sup>

For structural pest control, the law provides that each pest control business location must be licensed by the department and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business. Allowing a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same

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<sup>1</sup> <http://www.apms.org/japm/vol06/v6p14.pdf>

<sup>2</sup> <http://www.jstor.org/pss/3492520>

<sup>3</sup> <http://www.flaes.org/aes-ent/licenseandcert.html>

owner would allow licensees a more efficient means of providing service to customers while still protecting customers through specific requirements for licensure and accountability.

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing the the department with a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury: \$100,000 each person and \$300,000 each occurrence; and property damage: \$50,000 each occurrence and \$100,000 in the aggregate.<sup>4</sup> These minimum requirements for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Rats and mice often enter homes, farm buildings, and warehouses in search of food and shelter. The most common rodent pests in Florida are rats and mice. These rodents have adapted to live with man, who has carried them to every corner of the earth. Rats and mice consume or contaminate large quantities of food and damage structures, stored clothing, and documents. They also serve as reservoirs or vectors of numerous diseases, such as Rat-bite fever, Leptospirosis (Weil's Disease), Murine Typhus, Rickettsial pox, Plague, Trichinosis, Typhoid, Dysentery, Salmonellosis, *Hymenolepis* tapeworms, Lymphocytic choriomeningitis, and Hanta virus.

In most cases of rodent infestation, the pest animals can be controlled without having to resort to the use of poisons. If rodents do find their way indoors, small populations can be easily eliminated with various nontoxic methods. Rodenticides (rodent poisons) need only be used in cases of large or inaccessible infestations. The trapping of rodent pests is often preferable to the use of poisons. Traps prevent rodents from dying in inaccessible places and causing an odor problem. There is no chance of an accidental poisoning or secondary poisoning of nontarget wildlife, pets, or children with the use of traps. Secondary poisoning of pets or wildlife can result from eating poisoned rodents. Traps can be used in situations where poisons are not allowed or recommended, such as in food handling establishments.<sup>5</sup>

Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical method to control rodents. For several years, the Florida Fish and Wildlife Conservation Commission has issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in permitting being discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected. This bill clarifies that certificate holders who practice accepted pest control methods would be immune from liability for violating laws prohibiting cruelty to animals.

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

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<sup>4</sup> s. 482.071(4), F.S.

<sup>5</sup> <http://edis.ifas.ufl.edu/mg218>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 482.051, F.S., to authorize a rule change. In the event of an emergency requiring fumigation, pest control operators may provide emergency notice of the fumigation location to the Department of Agriculture and Consumer Services by facsimile or other form of electronic means.

**Section 2** amends s. 482.071, F.S., to increase the minimum insurance requirements for a pest control licensee from \$100,000 to \$250,000. This change reflects the current levels of insurance offered by liability insurers.

**Section 3** creates s. 482.072, F.S., to allow the establishment, inspection and regulation of centralized pest control customer contact centers. This would allow licensed centers to solicit pest control business and to provide service to customers for one or more business locations. It provides for the biennial renewal of the license. It also establishes a licensure fee of at least \$600, but not more than \$1,000 and renewal fees of at least \$600, but not more than \$1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a \$250 fee. It authorizes the department to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of chapter 482, F.S., or any rule adopted hereunder.

**Section 4** creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least \$150, but not to exceed \$300. This section also provides for recertification fees, classes, and late fees. The bill limits the scope of work permitted by certificate holders and clarifies that licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws.

**Section 5** amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from \$50,000 to \$250,000. This change reflects the current levels of insurance offered by liability insurers.

**Section 6** provides that this act shall take effect July 1, 2011.

#### **Other Potential Implications:**

None.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Refer to Private Sector and Government Sector Impacts.

**B. Private Sector Impact:**

Pest control businesses that choose to obtain the license for a customer service center would incur the fees established by the bill. Pest control businesses that do not currently have the proposed minimum insurance requirements will have to increase their insurance coverage and will incur additional costs. Most insurance available today already exceeds the 1992 limits.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur the fees associated with the limited certification.

**C. Government Sector Impact:**

|  | 2011-12          | 2012-13         | 2013-14          |
|--|------------------|-----------------|------------------|
| <b>REVENUES:</b>                       |                  |                 |                  |
| <u>Customer Contact Center:</u>        |                  |                 |                  |
| License*                               | 6,000            | 0               | 6,000            |
| <u>Limited Certification Wildlife:</u> |                  |                 |                  |
| Limited Certification Exam**           | 15,000           | 7,500           | 7,500            |
| Limited Certification Renewal***       | 0                | 7,500           | 7,500            |
| <b>TOTAL</b>                           | <b>\$ 21,000</b> | <b>\$15,000</b> | <b>\$ 21,000</b> |

\*Based on 10 licenses issued per year at \$600 each, renewing biennially.

\*\*Based on 100 exams the first year, 50 the second and third years, at \$150 each.



\*\*\*Based on 100 renewals at \$75 each.

|                      | 2011-12         | 2012-13         | 2013-14         |
|----------------------|-----------------|-----------------|-----------------|
| <b>EXPENDITURES:</b> |                 |                 |                 |
| Inspections*         | 15,860          | 15,860          | 15,860          |
| License Issuance**   | 1,097           | 499             | 1,595           |
| <b>TOTAL</b>         | <b>\$16,957</b> | <b>\$16,359</b> | <b>\$17,455</b> |

\*FY 09-10 unit cost per inspection, 20 inspections at \$793.

\*\*FY 09-10 unit cost per license, 110 inspections at \$9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

#### VI. Technical Deficiencies:

The Department of Agriculture and Consumer Services has identified some inconsistencies that need to be corrected in the bill.

- Line 103 of the bill should read “business licensees for whom the customer contact center solicits business is owned in common by a”
- Line 172 of the bill should read “(c) Supervision of an uncertified person using non-chemical methods to control rodents.”
- Line 184 of the bill should read “no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000 “

#### VII. Related Issues:

None.

#### VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Garcia) recommended the following:

**Senate Amendment**

Delete line 103  
and insert:  
business licensees for whom it solicits business are owned in  
common by a



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Garcia) recommended the following:

**Senate Amendment**

Delete line 172

and insert:

(c) Supervision of an uncertified person using non-chemical  
methods to control rodents.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Agriculture (Garcia) recommended the following:

**Senate Amendment**

Delete line 184  
and insert:  
no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000