

STORAGE NAME: h1119.jo.doc
DATE: February 11, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1119
RELATING TO: Agriculture/Crop Damage/Destruction
SPONSOR(S): Representatives Heyman, Kendrick and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) AGRICULTURE & CONSUMER AFFAIRS
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Current law provides to a grower or producer of agricultural products a civil cause of action for double damages, plus costs and attorney's fees, against any person who willfully and knowingly destroys those agricultural products.

This bill adds agricultural production systems to this civil cause of action; and increases the damages award from double to triple the amount of the value of the product or system damaged or destroyed.

This bill also provides an exemption from liability applicable to the state and local governments.

This bill does not appear to have a fiscal impact on state or local governments.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill expands a civil cause of action.

B. PRESENT SITUATION:

Section 604.60, F.S. provides a civil cause of action to a grower or producer of agricultural products against a person who willfully and knowingly destroys agricultural products belonging to the grower or producer. It provides that any private, public, or commercial agricultural grower or producer who grows or produces any agricultural product for personal, research, or commercial purposes or for testing or research purposes in a product development program conducted in conjunction or coordination with a private research facility, a university, or any federal, state, or local government agency who suffers damages as a result of another person's willful and knowing damage or destruction of any such agricultural product has a civil cause of action for damages.

Section 604.60, F.S., cross-references to the definition of "agricultural products" in s. 468.382(7), F.S.

Damages awarded under s. 604.60, F.S. include an amount equal to double the amount of the value of the product damaged or destroyed, including the cost of any experimental product replication. The court may also award compensatory and punitive damages. However, the total damages awarded is twice the market value of the product prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement, and product development costs directly related to the product that has been damaged or destroyed. The prevailing party is entitled to court costs and reasonable attorney's fees.

C. EFFECT OF PROPOSED CHANGES:

This bill removes the cross-reference to "agricultural products" in 468.382(7), F.S., and transfers it verbatim into s. 604.60, F.S. The agricultural products is defined to include the natural products from a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock, tobacco, and vegetables, and includes aquacultural, horticultural, viticultural, forestry, aquatic, dairy, livestock, poultry, bee, and any farm products.

This bill provides that a cause of action under s. 604.60, F.S. may also be pursued for damage or destruction to "agricultural production systems", which are defined to mean land, buildings, or equipment used in the production of any agricultural product.

This bill increases the damages award to triple the amount of the value of the product damaged or destroyed, including the cost of any experimental product replication.

This bill also provides that there will be no liability on the part of the state or any agency thereof, including any criminal justice agency, the Department of Agriculture and Consumer Services or its agents or employees, a local governmental entity, or any other political subdivision of the state for any action taken by them in the performance of their powers and duties. It further provides that there will be no cause of action arising against any of these agencies or the state.

This bill provides an effective date of October 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The intentional damage or destruction of agricultural property or agricultural production systems by any governmental agency may perhaps appear to be a "taking" by the government without just compensation. In *Rabin v. Lake Worth Drainage District*,¹ the Supreme Court of Florida determined that crops destroyed through an action of the Lake Worth Drainage District were not a "taking" by the agency.² Any destruction, if negligent, constitutes a tort,³ actionable under Florida negligence statutes with the exception of any actions that are taken pursuant to the police powers of the state as provided in s. 11.066(2), F.S., which provides:

The state and each state agency, when exercising its inherent police power to protect the public health, safety, or welfare, is presumed to be acting to prevent a public harm. A person may rebut this presumption in a suit seeking monetary damages from the state or a state agency only by clear and convincing evidence to the contrary.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The exemption from civil liability provided to the state and any agency of the states, under proposed subsection (4) of s.604.60, F.S., by this bill, is not limited to s. 604.60, F.S. As written, this provision could possibly provide the state or any state agency with a general exemption from all liability, in contravention of s. 768.28, F.S.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

¹ 82 So.2d 353 (Fla. 1955).

² *Id.* at 355, *see also*, *Ardundel Corp. v. Griffin*, 89 Fla. 128, 103 So. 422 (1925), holding that damage to property without just compensation is no expressly forbidden in the Florida Constitution.

³ *Id.* at 355.

STORAGE NAME: h1119.jo.doc

DATE: February 11, 2002

PAGE: 5

VI. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Noelle M. Melanson

Nathan L. Bond J.D.