

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/CS/SB 1388

INTRODUCER: Commerce and Consumer Services Committee, Agriculture Committee and Senator Smith

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 29, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute for committee substitute addresses the following issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services (department):

- Redefines the terms “employee” and “independent contractor” for pest control licensees;
- Provides more flexibility for adopting rules to accommodate new types of pesticides used for preventative treatments of subterranean termites in new construction;
- Expands the products a Limited Commercial Landscape Maintenance certificate holder may apply to include fungicides and allows the certificate holder to provide proof of insurance after passing the certificate examination;
- Renames the Florida Food Safety and Food Security Advisory Council as the “Florida Food Safety and Food Defense Advisory Council”;
- Creates the Florida Farm to Fuel Act for production of bioenergy from Florida biomass;
- Establishes the Farm to Fuel Grants Program to provide grants for research, development, and demonstration of commercial applications of bioenergy technology;
- Authorizes the Commissioner of Agriculture to appoint a Florida Farm to Fuel Advisory Council to provide advice and counsel on the production of bioenergy in the state;
- Authorizes the department to conduct a statewide information and education program aimed at informing the business sector on the available grants and educating the general public on the benefits of renewable energy and the use of alternative fuels;
- Creates tax credits for taxpayers who produce ethanol or biodiesel at a facility located in Florida;

- Provides for all members of the Soil and Water Conservation Council to be voting members;
- Repeals an exemption to the Structural Pest Control Act, which allows a yard worker to apply a pesticide at a property owner's residence using pesticides supplied by the property owner;
- Updates or deletes obsolete language and corrects a cross reference;
- Designates the Austin Dewey Gay Agricultural Inspection Station in Escambia County; and
- Provides an appropriation of \$5,500,000 from the General Revenue Fund to the Department of Agriculture and Consumer Services to implement the Farms to Fuel Grant Program.

This committee substitute for committee substitute amends sections 403.067, 482.021, 482.051, 482.091, 482.156, 482.211, 500.033, 582.06 and 828.30 of the Florida Statutes.

This committee substitute for committee substitute creates sections 220.192 and 570.954 and repeals section 482.211 of the Florida Statutes.

II. Present Situation:

Pest Control

Employees who perform pest control for a pest control licensee in Florida are required to have an identification card issued by the Department of Agriculture and Consumer Services (department). The department's Bureau of Entomology and Pest Control has reported that recent investigations have determined that an unknown number of business licensees have been obtaining identification cards for individuals who are operating as independent business entities. Independent business entities who secure their own clients, collect money for their services, and provide their own vehicles and equipment, operate without the level of supervision and training typical of identification cardholders who are truly employees of pest control licensees. The department fears the lack of supervision and training provided to independent business entities, as well as a lack of liability insurance, present a danger to public safety.

The current definition of independent contractor requires several elements of independent activity be present before disciplinary action can be taken against a business licensee and the identification card of the independent contractor can be revoked. The department reports this increases the level of difficulty for developing evidence for a disciplinary action, as well as allowing business licensees to continue to provide identification cards to independent contractors.

The department currently has rule-making authority regarding the application of pesticides used in the preventive treatment for subterranean termites for new construction. This provision was established when the primary treatment was the application of large volumes of insecticides to the soil during construction. Since that time, new treatment methods have been developed, such as baiting systems, non-repellant termiticides, and direct application to wood. This committee substitute provides more flexibility in the development of rules regarding these types of treatments.

Florida law establishes a certification category for persons who wish to apply certain low-risk pesticides to plant beds and ornamentals as part of landscape maintenance activities. Only persons who acquire this certification are authorized to perform the application. To date, approximately 3,200 Limited Commercial Landscape Maintenance (LCLM) certifications have been issued to persons who work in the landscape maintenance industry and apply pesticides as part of their services. Chapter 482, F.S., places restrictions on the areas and types of pesticides certificate holders may apply. As technology has improved and new products have been developed, current law limits the ability of the certificate holders to perform landscape maintenance activities properly. This committee substitute expands the types of products the certificate holders may apply to include fungicides.

Additionally, current law requires those seeking certification to obtain proof of insurance **prior** to passing the examination. According to the department, this requirement places an undue burden on applicants. The department estimates approximately 30,000 persons in the industry require LSLM certification. Voluntary compliance is, in part, hindered by current statutory requirements. This committee substitute amends current law to require proof of insurance **after** passing the examination. The department believes this will result in increased compliance with the Florida Structural Pest Control Act and increase the number of individuals who will benefit from the pesticide application and safety training provided as part of the certification process.

Mosquito Control

Mosquito control is, in general, regulated by ch. 388, F.S. However, s. 482.211, F.S., deals with the establishment and regulation of mosquito control programs operated by local governments. According to the department, a number of private companies have recently begun advertising mosquito control application services for consumers. The proposed committee substitute clarifies that the exemption to regulation under ch. 482, F.S., applies only to those programs established and operated in accordance with the provisions of ch. 388, F.S. The department believes this will prevent unlicensed and untrained operators from conducting pest control activities under the guise of mosquito control.

Florida Food Safety and Food Defense Advisory Council

During the 2003 Legislative Session, the Florida Food Safety and Food Security Advisory Council (council) was created. The council had previously existed as an *ad hoc* task force created by the Commissioner of Agriculture to ensure the safety of Florida's food supply in the aftermath of 9-11 and the Mad Cow disease outbreak in Europe. The council is composed of representatives from every facet of the food industry. The council provides a forum for presenting, investigating, and evaluating issues of current importance in food safety. During the course of its meetings, it came to the attention of the council that, in many nations, "food security" refers to maintaining an availability of an adequate supply of food. "Food defense" is used to refer to the "protection" of the food supply. The federal government is in the process of making the necessary changes to conform with those in use internationally and encourages states to do the same.

Farm to Fuel

The Commissioner of Agriculture has recently hosted meetings to explore the role that the state's \$62 billion agricultural industry can play in producing bio-fuel crops to help reduce the nation's dependency on foreign oil. The Commissioner believes that Florida can be a leader in

the effort to produce energy from crops and timber because of the vast amount of farm acreage in the state and its mild climate, which permits crops to be grown virtually year round. Ethanol is a fuel that can be created from plants and then blended with gasoline to power automobiles. This results in lower emissions and less oil-based fuel being burned. Companies are now attempting to market and sell alternative fuels in Florida and auto manufacturers are producing an increasing number of vehicles that are equipped to run on alternative fuels.

Soil and Water Conservation Council

During the 2003 Legislative Session, the Agricultural Water Policy Group was integrated into the Soil and Water Conservation Council (council) by adding twelve non-voting *ex officio* members. These members represented the same interest groups that were represented in the Water Policy Group and are appointed by recommendations from the various interest groups.

In the two years since the integration, the council has become more diverse with a high level of participation from all members, voting or not. At the recommendation of the chair of the council, and with the support of the Commissioner of Agriculture, this committee substitute provides for all members of the council to be voting members.

Rabies Vaccination

Due to a change in forms at the federal level, it is necessary to amend current Florida statutes to reflect this change. The committee substitute removes the words "Form 51" in reference to the Rabies Vaccination Certificate.

III. Effect of Proposed Changes:

Section 1. Amends s. 482.021, F.S., to revise the definition for "employee" to clarify that this person is not independent of, but is under the personal supervision and direct control of a licensee's certified operator who is in charge of the employee. Amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation.

Section 2. Amends s. 482.051, F.S., to revise requirements regarding rule adoption as it relates to pesticides for subterranean termites. Provides the Department of Agriculture and Consumer Services with more flexibility in developing rules for more recent treatment methods used in new construction.

Section 3. Amends s. 482.091, F.S., to clarify provisions governing employees who perform pest control for licensees under an identification card.

Section 4. Amends s. 482.156, F.S., to establish a limited certification category for individual commercial landscape maintenance personnel. Revises the types of materials such personnel may use to include fungicides. Removes obsolete provisions relating to fees. Clarifies applicable certification and re-certification examination fees. Clarifies requirements relating to insurance. Revises the criteria for eligibility to take the commercial landscape maintenance personnel examination. Reduces the required classroom hours and deletes the requirement that an applicant has to have been in the landscape maintenance business for three years.

Section 5. Amends s. 482.211, F.S., to clarify a provision exempting from regulation certain mosquito control activities conducted by a local government or district established under ch. 388, F.S., by special act, or by a contractor of the local government or district.

Section 6. Amends s. 500.033, F.S., to rename the Florida Food Safety and Food Security Advisory Council as the “Florida Food Safety and Food Defense Advisory Council.”

Section 7. Creates s. 570.954, F.S., to establish the “Florida Farm to Fuel Act” for production of bioenergy from Florida biomass. Provides legislative findings. Provides criteria for the distribution of grants. Defines the terms biomass, department, and person. Establishes the Farm to Fuel Grants Program to provide grants for research, development, and demonstration of commercial applications of bioenergy technology. Authorizes the department to conduct a statewide information and education program aimed at informing the business sector on the available grants and educating the general public on the benefits of renewable energy and the use of alternative fuels. Authorizes the Commissioner of Agriculture to appoint a Florida Farm to Fuel Advisory Council. Requires the council to provide advice and counsel to the Commissioner on the production of bioenergy in the state. Authorizes the Department of Agriculture and Consumer Services to adopt rules to implement the provisions of this section.

Section 8. Creates s. 220.192, F.S., to allow a tax credit against corporate income taxes as established in ch. 220, F.S., based on per gallon production of ethanol and biodiesel which are produced at Florida facilities and generated from Florida agriculture products. Authorizes the Department of Revenue to adopt rules relating to the forms required to claim a tax credit. Provides for a July 1, 2010, repeal of the tax credits.

Section 9. Amends s. 582.06, F.S., to delete language that made twelve members of the Soil and Water Conservation Council non-voting *ex officio* members. This change provides for all members of the council to be voting members.

Section 10. Amends s. 828.30, F.S., to update a reference to the Rabies Vaccination Certificate.

Section 11. Amends s. 403.067, F.S., to correct a cross reference and make other technical changes. In 2005, there was a significant rewrite to the Florida Watershed Restoration Act which unintentionally eliminated incentives that were provided in the original legislation. Provides that there is a presumption of compliance with state water quality standards for those research sites funded by the Department of Environmental Protection (DEP), a water management district, or the Department of Agriculture and Consumer Services (DACS) to develop or demonstrate interim measures or best management practices.

Section 12. Repeals subsection (11) of s. 482.211, F.S. This eliminates an exemption to the Structural Pest Control Act, which allows a yard worker to apply a pesticide at a property owner’s residence using pesticides supplied by the property owner.

Section 13. Designates the Austin Dewey Gay Agricultural Inspection Station in Escambia County.

Section 14. Provides an appropriation of \$5,500,000 from the General Revenue Fund to the Department of Agriculture and Consumer Services to implement the Farms to Fuel Grant Program.

Section 15. Provides that this act shall take effect July 1, 2006.

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:

Section 8 of this bill provides for a tax credit against corporate income taxes for the production of ethanol and biodiesel which are produced at Florida facilities and generated from Florida agriculture products. However, the tax credit may violate the Commerce Clause of the U.S. Constitution.

In *Bacchus Imports v. Hawaii*, the U.S. Supreme Court held that the exemption for locally produced alcoholic beverages from the 20 percent excise tax imposed on sales of liquor at wholesale violated the commerce clause.¹ Later, in *McKesson v. Florida*, the U.S. Supreme Court invalidated a statute that provided a tax preference for alcoholic beverages produced in Florida using specified products commonly grown in Florida and ordered a refund of all taxes paid in excess of the preference amount.²

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 8 creates a farm to fuel production corporate income tax credit of 20 cents per gallon of ethanol or biodiesel produced using Florida grown commodities.

DACS reports that there are currently two ethanol production facilities in the planning stages, one at Port Manatee and the other at Port Sutton (Tampa). Each is expected to have an annual capacity of 40 million gallons (952,000 barrels) of ethanol derived from corn and sorghum grain which will be transported from the Midwest via barge.

¹ 468 U.S. 263 (1984).

² 492 U.S. 18 (1990).

In the event that these facilities exclusively use Florida crops for ethanol production, and operate at capacity, they would each be eligible for a corporate tax credit of \$8,000,000, for a cumulative impact of \$16,000,000.

This tax credit would be available for tax years beginning after January 1, 2007.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The only fiscal impact of the bill is in Section 8. Refer to "TAX/FEE Issues" section for explanation.

VI. Technical Deficiencies:

The Department of Revenue suggests the tax credit provisions be amended to address verification and carryover of the credits, the order in which the credit is claimed (relative to other credits against the corporate income tax), and definitions of ethanol and biodiesel.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
