

By the Committee on Agriculture; and Senator Smith

575-1878-06

1 A bill to be entitled

2 An act relating to the Department of

3 Agriculture and Consumer Services; amending s.

4 482.021, F.S.; revising the definitions of the

5 terms "employee" and "independent contractor"

6 for purposes of pest control regulation;

7 amending s. 482.051, F.S.; revising certain

8 requirements of the department to adopt rules

9 relating to the use of pesticides for

10 preventing subterranean termites in new

11 construction; amending s. 482.091, F.S.;

12 clarifying provisions governing the performance

13 of pest control services; amending s. 482.156,

14 F.S.; requiring certification of individual

15 commercial landscape maintenance personnel;

16 revising the types of materials such personnel

17 may use; removing obsolete provisions relating

18 to fees; revising criteria for eligibility to

19 take the commercial landscape maintenance

20 personnel examination; clarifying requirements

21 relating to proof of education and insurance;

22 amending s. 482.211, F.S.; clarifying exemption

23 of certain mosquito-control activities from

24 regulation; amending s. 500.033, F.S.; renaming

25 the Florida Food Safety and Food Security

26 Advisory Council as the Florida Food Safety and

27 Food Defense Advisory Council and revising

28 duties accordingly; creating s. 570.954, F.S.;

29 providing a short title; providing legislative

30 findings; providing purposes; providing

31 definitions; establishing the Farm to Fuel

1 Grants Program; providing criteria for
2 distribution of grants; authorizing appointment
3 of an advisory council; providing purposes;
4 providing membership; authorizing the
5 department to adopt rules; creating s. 220.192,
6 F.S.; providing certain tax credits for certain
7 producers of ethanol and biodiesel; authorizing
8 the Department of Revenue to adopt certain
9 rules relating to the tax credits; providing
10 for future repeal of the tax credits; amending
11 s. 582.06, F.S.; revising the membership of the
12 Soil and Water Conservation Council; amending
13 s. 828.30, F.S.; updating references to the
14 Rabies Vaccination Certificate; amending s.
15 403.067, F.S.; clarifying the authority for
16 certain measures to be implemented by the
17 Department of Environmental Protection for
18 certain water bodies; repealing s. 482.211(11),
19 F.S., related to an exemption from ch. 482,
20 F.S., provided for a yard worker when applying
21 a pesticide to the lawn or ornamental plants of
22 an individual residential property owner under
23 certain circumstances; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Subsections (7) and (12) of section
29 482.021, Florida Statutes, are amended to read:

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1 482.021 Definitions.--For the purposes of this
2 chapter, and unless otherwise required by the context, the
3 term:

4 (7) "Employee" means a person who is employed by a
5 licensee that provides that person with necessary training,
6 supervision, pesticides, equipment, and insurance and who
7 receives compensation from and is under the personal
8 supervision and direct control of the licensee's certified
9 operator in charge and licensee from whose ~~which~~ compensation
10 ~~of~~ the licensee regularly deducts and matches federal
11 insurance contributions and federal income and Social Security
12 taxes.

13 (12) "Independent contractor" means an entity separate
14 from the licensee that:

15 (a) Receives moneys from a customer which are
16 deposited in a bank account other than that of the licensee;

17 (b) Owns or supplies its own service vehicle,
18 equipment, and pesticides; ~~or~~

19 (c) Maintains a business operation, office, or support
20 staff independent of the licensee's direct control;

21 (d) Pays its own operating expenses such as fuel,
22 equipment, pesticides, and materials; or

23 (e) ~~(e)~~ Pays its own workers' ~~worker's~~ compensation as
24 an independent contractor.

25 Section 2. Subsection (5) of section 482.051, Florida
26 Statutes, is amended to read:

27 482.051 Rules.--The department has authority to adopt
28 rules pursuant to ss. 120.536(1) and 120.54 to implement the
29 provisions of this chapter. Prior to proposing the adoption of
30 a rule, the department shall counsel with members of the pest
31 control industry concerning the proposed rule. The department

1 shall adopt rules for the protection of the health, safety,
2 and welfare of pest control employees and the general public
3 which require:

4 (5) That any pesticide used as the primary preventive
5 treatment for ~~preconstruction treatments for the prevention of~~
6 subterranean termites in new construction be applied in the
7 amount, concentration, and treatment area in accordance with
8 the label; that a copy of the label of the registered
9 pesticide being applied be carried in a vehicle at the site
10 where the pesticide is being applied; and that the licensee
11 maintain for 3 years the record of each preconstruction
12 treatment, indicating the date of treatment, the location or
13 address of the property treated, the total square footage of
14 the structure treated, the type of pesticide applied, the
15 concentration of each substance in the mixture applied, and
16 the total amount of pesticide applied.

17 Section 3. Paragraph (a) of subsection (2) of section
18 482.091, Florida Statutes, is amended to read:

19 482.091 Employee identification cards.--

20 (2)(a) An identification cardholder must be an
21 employee of the licensee and work under the direction and
22 supervision of the licensee's certified operator in charge and
23 shall ~~may~~ not be an independent contractor. An identification
24 cardholder shall operate ~~may perform~~ only ~~pest control~~
25 ~~services~~ out of, and ~~or~~ for customers assigned ~~arising~~ from,
26 the licensee's licensed business location. An identification
27 cardholder shall ~~may~~ not perform any pest control
28 independently of and without the knowledge of the licensee and
29 the licensee's certified operator in charge and shall ~~may~~
30 perform pest control only for the licensee's customers.
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1 Section 4. Subsections (1), (2), and (3) of section
2 482.156, Florida Statutes, are amended to read:

3 482.156 Limited certification for commercial landscape
4 maintenance personnel.--

5 (1) The department shall establish a limited
6 certification category for individual commercial landscape
7 maintenance personnel to authorize them to apply herbicides
8 for controlling weeds in plant beds and to perform integrated
9 pest management on ornamental plants using ~~the following~~
10 ~~materials~~ insecticides and fungicides having the signal word
11 "caution" but not having the word "warning" or "danger" on the
12 label, ~~insecticidal soaps, horticultural oils, and bacillus~~
13 ~~thuringiensis formulations~~. The application equipment that may
14 be used by a person certified pursuant to this section is
15 limited to portable, handheld 3-gallon compressed air sprayers
16 or backpack sprayers having no more than a 5-gallon capacity
17 and does not include power equipment.

18 (2)(a) A person seeking limited certification under
19 this section must pass an examination given by the department.
20 Each application for examination must be accompanied by an
21 examination fee set by rule of the department, in an amount of
22 not more than \$150 or less than \$50; ~~however, until a rule~~
23 ~~setting this fee is adopted by the department, the examination~~
24 ~~fee is \$50. Prior to the department's issuing a limited~~
25 ~~certification under this section, each person applying making~~
26 ~~application for the certification under this section~~ must
27 furnish proof of having a certificate of insurance which
28 states that the employer meets the requirements for minimum
29 financial responsibility for bodily injury and property damage
30 required by s. 482.071(4).
31

1 **(b)** To be eligible to take the examination, an
2 applicant must have completed 6 & classroom hours of plant bed
3 and ornamental continuing education training approved by the
4 department and provide sufficient proof, according to criteria
5 established by department rule, ~~that the applicant has been in~~
6 ~~the landscape maintenance business for at least 3 years.~~

7 ~~(b)~~ The department shall provide the appropriate
8 reference materials for the examination and make the
9 examination readily accessible and available to applicants at
10 least quarterly or as necessary in each county.

11 (3) An application for recertification under this
12 section must be made annually and be accompanied by a
13 recertification fee set by rule of the department, in an
14 amount of not more than \$75 or less than \$25; ~~however, until a~~
15 ~~rule setting this fee is adopted by the department, the fee~~
16 ~~for recertification is \$25.~~ The application must also be
17 accompanied by proof of having completed 4 classroom hours of
18 acceptable continuing education and the same proof of having a
19 certificate of insurance as is required for issuance of this
20 ~~initial~~ certification. After a grace period not exceeding 30
21 calendar days following the annual date that recertification
22 is due, a late renewal charge of \$50 shall be assessed and
23 must be paid in addition to the renewal fee. Unless timely
24 recertified, a certificate automatically expires 180 calendar
25 days after the anniversary recertification date. Subsequent to
26 such expiration, a certificate may be issued only upon
27 successful reexamination and upon payment of the examination
28 fees due.

29 Section 5. Subsection (7) of section 482.211, Florida
30 Statutes, is amended to read:

31 482.211 Exemptions.--This chapter does not apply to:

1 (7) ~~Area~~ Mosquito control activities conducted by a
2 local government or district established under chapter 388 or
3 by a contractor of the local government or district.

4 Section 6. Section 500.033, Florida Statutes, is
5 amended to read:

6 500.033 Florida Food Safety and Food Defense Security
7 Advisory Council.--

8 (1) There is created the Florida Food Safety and Food
9 Defense Security Advisory Council for the purpose of serving
10 as a forum for presenting, investigating, and evaluating
11 issues of current importance to the assurance of a safe and
12 secure food supply to the citizens of Florida. The Florida
13 Food Safety and Food Defense Security Advisory Council shall
14 consist of, but not be limited to: the Commissioner of
15 Agriculture or his or her designee; the Secretary of Health or
16 his or her designee; the Secretary of Business and
17 Professional Regulation or his or her designee; the person
18 responsible for domestic security with the ~~Florida~~ Department
19 of Law Enforcement; members representing the production,
20 processing, distribution, and sale of foods; consumers or
21 ~~and/or~~ members of citizens groups; representatives of ~~or~~ food
22 industry groups; scientists or other experts in aspects of
23 food safety from state universities; representatives from
24 local, state, and federal agencies that are charged with
25 responsibilities for food safety or food defense security; the
26 chairs of the Agriculture Committees of the Senate and the
27 House of Representatives or their designees; and the chairs of
28 the committees of the Senate and the House of Representatives
29 with jurisdictional oversight of home defense issues or their
30 designees. The Commissioner of Agriculture shall appoint the
31 remaining members. The council shall make periodic reports to

1 the Department of Agriculture and Consumer Services concerning
2 findings and recommendations in the area of food safety and
3 food ~~defense security~~.

4 (2) The council shall consider the development of
5 appropriate advice or recommendations on food safety or food
6 ~~defense security~~ issues. In the discharge of their duties, the
7 council members may receive for review confidential data
8 exempt from the provisions of s. 119.07(1); however, it is
9 unlawful for any member of the council to use the data for his
10 or her advantage or reveal the data to the general public.

11 Section 7. Section 570.954, Florida Statutes, is
12 created to read:

13 570.954 Farm to fuel.--

14 (1) This section may be cited as the "Florida Farm to
15 Fuel Act."

16 (2) The Legislature finds that:

17 (a) Utilization of Florida crops and biomass for
18 production of bioenergy is important for the state's future
19 energy stability, protection of its environment, and continued
20 viability of its agriculture industry.

21 (b) Development of bioenergy will help to reduce
22 demand for foreign fuels, reduce pollution, and promote
23 economic growth.

24 (c) Assistance in the production and distribution of
25 bioenergy in the state is needed.

26 (d) Production of bioenergy in the state is ideal due
27 to the state's vast amount of farm acreage and mild climate,
28 which permit crops to be grown virtually year-round, and the
29 availability of other biomass.

30 (3) This section is intended to provide grants to:
31

1 (a) Stimulate capital investment in the state and
2 enhance the market for and promote the production and
3 distribution of bioenergy.

4 (b) Advance the already growing establishment of
5 bioenergy technologies in the state and attract additional
6 bioenergy production to the state.

7 (c) Demonstrate technologies or processes that convert
8 Florida-grown crops, agricultural wastes and residues, and
9 other biomass into bioenergy.

10 (4) As used in this section, the term:

11 (a) "Biomass" means a power source that is comprised
12 of, but not limited to, combustible residues or gases from
13 forest products manufacturing, agricultural and orchard crops,
14 waste products from livestock and poultry operations and food
15 processing, urban wood waste, municipal solid waste, municipal
16 liquid waste treatment operations, and landfills.

17 (b) "Department" means the Department of Agriculture
18 and Consumer Services.

19 (c) "Person" means an individual, partnership, joint
20 venture, private or public corporation, association, firm,
21 public service company, or any other entity, public or
22 private, however organized.

23 (5) The Farm to Fuel Grants Program is established
24 within the department to provide grants for research,
25 development, and demonstration of commercial applications of
26 bioenergy technology.

27 (a) Grants made under this section for bioenergy
28 projects may be made to any person who meets the criteria in
29 this section.

30 (b) Factors the department may consider in awarding
31 grants include, but are not limited to, the degree to which:

1 1. The project stimulates in-state capital investment
2 and economic development in metropolitan and rural areas,
3 including the creation of jobs and the future development of a
4 commercial market for bioenergy.

5 2. The project produces bioenergy from Florida-grown
6 crops or biomass.

7 3. The project demonstrates efficient use of energy
8 and material resources.

9 4. The project fosters overall understanding and
10 appreciation of bioenergy technologies.

11 5. Matching funds and in-kind contributions from an
12 applicant are available.

13 6. The project duration and the timeline for
14 expenditures are acceptable.

15 7. The project has a reasonable assurance of enhancing
16 the value of agricultural products or will expand agribusiness
17 in the state.

18 8. Preliminary market and feasibility research has
19 been conducted by the applicant or others and shows there is a
20 reasonable assurance of a potential market.

21 (6) Pursuant to s. 570.0705, the Commissioner of
22 Agriculture may appoint a Florida Farm to Fuel Advisory
23 Council consisting of a diverse group of stakeholders that
24 includes, but is not limited to, representatives of the
25 agriculture industry, researchers, fuel suppliers, technology
26 manufacturers, and environmental interests. The council shall
27 provide advice and counsel to the Commissioner of Agriculture
28 on the production of bioenergy in the state.

29 (7) The department may adopt rules pursuant to ss.
30 120.536(1) and 120.54 to implement the provisions of this
31 section.

1 Section 8. Section 220.192, Florida Statutes, is
2 created to read:

3 220.192 Farm to fuel production tax credit.--

4 (1) For tax years beginning on or after January 1,
5 2007, a credit against the tax imposed under this chapter
6 shall be granted in an amount to be determined as follows:

7 (a) A taxpayer who produces ethanol at a facility
8 located in this state is entitled to a credit against the
9 taxpayer's state tax liability equal to the product of 20
10 cents multiplied by the number of gallons of ethanol produced
11 at the facility using Florida-grown commodities.

12 (b) A taxpayer who produces biodiesel at a facility
13 located in this state is entitled to a credit against the
14 taxpayer's state tax liability equal to the product of 20
15 cents multiplied by the number of gallons of biodiesel
16 produced at the facility using Florida-grown commodities.

17 (2) The department shall adopt rules relating to the
18 forms required to claim a tax credit under this section, the
19 requirements and basis for establishing an entitlement to a
20 credit, and the examination and audit procedures required to
21 administer this section.

22 (3) This section is repealed July 1, 2010.

23 Section 9. Paragraphs (b) and (c) of subsection (1) of
24 section 582.06, Florida Statutes, are amended to read:

25 582.06 Soil and Water Conservation Council; powers and
26 duties.--

27 (1) COMPOSITION.--The Soil and Water Conservation
28 Council is created in the Department of Agriculture and
29 Consumer Services and shall be composed of 23 members as
30 follows:
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1 (b) Twelve ~~nonvoting ex officio~~ members shall include
2 one representative each from the Department of Environmental
3 Protection, the five water management districts, the Institute
4 of Food and Agricultural Sciences at the University of
5 Florida, the United States Department of Agriculture Natural
6 Resources Conservation Service, the Florida Association of
7 Counties, and the Florida League of Cities, and two
8 representatives of environmental interests.

9 (c) All members shall be appointed by the
10 commissioner. ~~Ex officio~~ Members appointed pursuant to
11 paragraph (b) shall be appointed by the commissioner from
12 recommendations provided by the organization or interest
13 represented.

14 Section 10. Subsection (3) of section 828.30, Florida
15 Statutes, is amended to read:

16 828.30 Rabies vaccination of dogs, cats, and
17 ferrets.--

18 (3) Upon vaccination against rabies, the licensed
19 veterinarian shall provide the animal's owner and the animal
20 control authority with a rabies vaccination certificate. Each
21 animal control authority and veterinarian shall use the Form
22 51, "Rabies Vaccination Certificate," of the National
23 Association of State Public Health Veterinarians (NASPHV) or
24 an equivalent form approved by the local government that
25 contains all the information required by the NASPHV Rabies
26 Vaccination Certificate Form 51. The veterinarian who
27 administers the rabies vaccine to an animal as required under
28 this section may affix his or her signature stamp in lieu of
29 an actual signature.

30 Section 11. Subsection (11) of section 403.067,
31 Florida Statutes, is amended to read:

1 403.067 Establishment and implementation of total
2 maximum daily loads.--

3 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

4 (a) The department shall not implement, without prior
5 legislative approval, any additional regulatory authority
6 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
7 130, if such implementation would result in water quality
8 discharge regulation of activities not currently subject to
9 regulation.

10 (b) Interim measures, best management practices, or
11 other measures may be developed and voluntarily implemented
12 pursuant to ~~paragraph subparagraphs~~ (7)(c)1. and 2. for any
13 water body or segment for which a total maximum daily load or
14 allocation has not been established. The implementation of
15 such pollution control programs may be considered by the
16 department in the determination made pursuant to subsection
17 (4).

18 Section 12. Subsection (11) of section 482.211,
19 Florida Statutes, is repealed.

20 Section 13. This act shall take effect July 1, 2006.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1388

Committee Substitute for Senate Bill 1388 is different from
Proposed Committee Substitute for Senate Bill 1388 in that it:

1. Revises the criteria for eligibility to take the commercial landscape maintenance personnel examination. It reduces the required classroom hours and deletes the requirement that an applicant has to have been in the landscape maintenance business for three years.
2. Correctly names the Commissioner of Agriculture.
3. 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.
4. Corrects a cross reference. In 2005, there was a significant rewrite to the Florida Watershed Restoration Act which unintentionally eliminated incentives that were provided in the original legislation.