

CHAMBER ACTION

1 The Agriculture & Environment Appropriations Committee
2 recommends the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to the Department of Agriculture and
8 Consumer Services; amending s. 403.067, F.S.; clarifying
9 rulemaking authority relating to pollution reduction;
10 granting presumption of compliance with water quality
11 standards for certain research; releasing certain research
12 from penalties relating to the discharge of pollutants;
13 amending s. 482.021, F.S.; revising the definitions of the
14 terms "employee" and "independent contractor" for purposes
15 of pest control regulation; amending s. 482.051, F.S.;
16 revising certain requirements of the department to adopt
17 rules relating to the use of pesticides for preventing
18 subterranean termites in new construction; amending s.
19 482.091, F.S.; clarifying provisions governing the
20 performance of pest control services; amending s. 482.156,
21 F.S.; requiring certification of individual commercial
22 landscape maintenance personnel; revising the types of
23 materials such personnel may use; removing obsolete

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24 provisions relating to fees; revising requirements
25 relating to proof of education and insurance; revising the
26 amount of required continuing education; removing a
27 requirement for certain business experience; amending s.
28 482.211, F.S.; clarifying exemption of certain mosquito
29 control activities from regulation; amending s. 500.033,
30 F.S.; renaming the Florida Food Safety and Food Security
31 Advisory Council as the Florida Food Safety and Food
32 Defense Advisory Council and revising duties accordingly;
33 amending s. 500.12, F.S.; providing an exemption from
34 certain food inspections by the department; creating s.
35 570.954, F.S.; authorizing the department, in consultation
36 with the state energy office within the Department of
37 Environmental Protection, to develop a farm-to-fuel
38 initiative; providing purposes of the initiative;
39 providing for a statewide information and education
40 program; amending s. 582.06, F.S.; revising the membership
41 of the Soil and Water Conservation Council; amending s.
42 810.09, F.S.; providing criminal penalties for trespassing
43 on certain property; requiring warning signage; amending
44 s. 810.011, F.S.; defining "agricultural chemicals
45 manufacturing facility"; amending s. 828.30, F.S.;
46 updating references to the Rabies Vaccination Certificate;
47 designating the Austin Dewey Gay Memorial Agricultural
48 Inspection Station in Escambia County; directing the
49 department to erect suitable markers; repealing s.
50 482.211(11), F.S.; removing an exemption from ch 482,
51 F.S., for a yard worker when applying pesticide to the

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52 | lawn or ornamental plants of an individual residential
53 | property owner under certain circumstances; providing an
54 | effective date.

55

56 | Be It Enacted by the Legislature of the State of Florida:

57

58 | Section 1. Paragraph (c) of subsection (7) and paragraph
59 | (b) of subsection (11) of section 403.067, Florida Statutes, are
60 | amended to read:

61 | 403.067 Establishment and implementation of total maximum
62 | daily loads.--

63 | (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
64 | IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

65 | (c) Best management practices.--

66 | 1. The department, in cooperation with the water
67 | management districts and other interested parties, as
68 | appropriate, may develop suitable interim measures, best
69 | management practices, or other measures necessary to achieve the
70 | level of pollution reduction established by the department for
71 | nonagricultural nonpoint pollutant sources in allocations
72 | developed pursuant to subsection (6) and this subsection. These
73 | practices and measures may be adopted by rule by the department
74 | and the water management districts pursuant to ss. 120.536(1)
75 | and 120.54, and, where adopted by rule, shall be implemented by
76 | those parties responsible for nonagricultural nonpoint source
77 | pollution.

78 | 2. The Department of Agriculture and Consumer Services may
79 | develop and adopt by rule pursuant to ss. 120.536(1) and 120.54

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80 | suitable interim measures, best management practices, or other
81 | measures necessary to achieve the level of pollution reduction
82 | established by the department for agricultural pollutant sources
83 | in allocations developed pursuant to subsection (6) and this
84 | subsection or for programs implemented pursuant to paragraph
85 | (11) (b). These practices and measures may be implemented by
86 | those parties responsible for agricultural pollutant sources and
87 | the department, the water management districts, and the
88 | Department of Agriculture and Consumer Services shall assist
89 | with implementation. In the process of developing and adopting
90 | rules for interim measures, best management practices, or other
91 | measures, the Department of Agriculture and Consumer Services
92 | shall consult with the department, the Department of Health, the
93 | water management districts, representatives from affected
94 | farming groups, and environmental group representatives. Such
95 | rules shall also incorporate provisions for a notice of intent
96 | to implement the practices and a system to assure the
97 | implementation of the practices, including recordkeeping
98 | requirements.

99 | 3. Where interim measures, best management practices, or
100 | other measures are adopted by rule, the effectiveness of such
101 | practices in achieving the levels of pollution reduction
102 | established in allocations developed by the department pursuant
103 | to subsection (6) and this subsection or in programs implemented
104 | pursuant to paragraph (11) (b) shall be verified at
105 | representative sites by the department. The department shall use
106 | best professional judgment in making the initial verification
107 | that the best management practices are reasonably expected to be

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108 effective and, where applicable, shall notify the appropriate
109 water management district or ~~and~~ the Department of Agriculture
110 and Consumer Services of its initial verification prior to the
111 adoption of a rule proposed pursuant to this paragraph.
112 Implementation, in accordance with rules adopted under this
113 paragraph, of practices that have been initially verified to be
114 effective, or verified to be effective by monitoring at
115 representative sites, by the department, shall provide a
116 presumption of compliance with state water quality standards and
117 release from the provisions of s. 376.307(5) for those
118 pollutants addressed by the practices, and the department is not
119 authorized to institute proceedings against the owner of the
120 source of pollution to recover costs or damages associated with
121 the contamination of surface water or groundwater caused by
122 those pollutants. Research funded by the department, a water
123 management district, or the Department of Agriculture and
124 Consumer Services to develop or demonstrate interim measures or
125 best management practices is granted a presumption of compliance
126 with state water quality standards and release from the
127 provisions of s. 376.307(5), which are limited to the research
128 site for those pollutants addressed by the practices.

129 4. Where water quality problems are demonstrated, despite
130 the appropriate implementation, operation, and maintenance of
131 best management practices and other measures according to rules
132 adopted under this paragraph, the department, a water management
133 district, or the Department of Agriculture and Consumer
134 Services, in consultation with the department, shall institute a
135 reevaluation of the best management practice or other measure.

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136 | Should the reevaluation determine that the best management
137 | practice or other measure requires modification, the department,
138 | a water management district, or the Department of Agriculture
139 | and Consumer Services, as appropriate, shall revise the rule to
140 | require implementation of the modified practice within a
141 | reasonable time period as specified in the rule.

142 | 5. Individual agricultural records relating to processes
143 | or methods of production, or relating to costs of production,
144 | profits, or other financial information which are otherwise not
145 | public records, which are reported to the Department of
146 | Agriculture and Consumer Services pursuant to subparagraphs 3.
147 | and 4. or pursuant to any rule adopted pursuant to subparagraph
148 | 2. shall be confidential and exempt from s. 119.07(1) and s.
149 | 24(a), Art. I of the State Constitution. Upon request of the
150 | department or any water management district, the Department of
151 | Agriculture and Consumer Services shall make such individual
152 | agricultural records available to that agency, provided that the
153 | confidentiality specified by this subparagraph for such records
154 | is maintained. This subparagraph is subject to the Open
155 | Government Sunset Review Act of 1995 in accordance with s.
156 | 119.15, and shall stand repealed on October 2, 2006, unless
157 | reviewed and saved from repeal through reenactment by the
158 | Legislature.

159 | 6. The provisions of subparagraphs 1. and 2. shall not
160 | preclude the department or water management district from
161 | requiring compliance with water quality standards or with
162 | current best management practice requirements set forth in any
163 | applicable regulatory program authorized by law for the purpose

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164 of protecting water quality. Additionally, subparagraphs 1. and
 165 2. are applicable only to the extent that they do not conflict
 166 with any rules adopted by the department that are necessary to
 167 maintain a federally delegated or approved program.

168 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

169 (b) Interim measures, best management practices, or other
 170 measures may be developed and voluntarily implemented pursuant
 171 to paragraph ~~subparagraphs~~ (7) (c) ~~1. and 2.~~ for any water body or
 172 segment for which a total maximum daily load or allocation has
 173 not been established. The implementation of such pollution
 174 control programs may be considered by the department in the
 175 determination made pursuant to subsection (4).

176 Section 2. Subsections (7) and (12) of section 482.021,
 177 Florida Statutes, are amended to read:

178 482.021 Definitions.--For the purposes of this chapter,
 179 and unless otherwise required by the context, the term:

180 (7) "Employee" means a person who is employed by a
 181 licensee that provides that person with necessary training,
 182 supervision, pesticides, equipment, and insurance and who
 183 receives compensation from and is under the personal supervision
 184 and direct control of the licensee's certified operator in
 185 charge and ~~licensee~~ from whose ~~which~~ compensation ~~of~~ the
 186 licensee regularly deducts and matches federal insurance
 187 contributions and federal income and Social Security taxes.

188 (12) "Independent contractor" means an entity separate
 189 from the licensee that:

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

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

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

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

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

200 Section 3. Subsection (5) of section 482.051, Florida
201 Statutes, is amended to read:

202 482.051 Rules.--The department has authority to adopt
203 rules pursuant to ss. 120.536(1) and 120.54 to implement the
204 provisions of this chapter. Prior to proposing the adoption of a
205 rule, the department shall counsel with members of the pest
206 control industry concerning the proposed rule. The department
207 shall adopt rules for the protection of the health, safety, and
208 welfare of pest control employees and the general public which
209 require:

210 (5) That any pesticide used as the primary preventive
211 treatment for ~~preconstruction treatments for the prevention of~~
212 ~~subterranean termites~~ in new construction be applied in the
213 amount, concentration, and treatment area in accordance with the
214 label; that a copy of the label of the registered pesticide
215 being applied be carried in a vehicle at the site where the
216 pesticide is being applied; and that the licensee maintain for 3
217 years the record of each preconstruction treatment, indicating
218 the date of treatment, the location or address of the property
219 treated, the total square footage of the structure treated, the

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220 type of pesticide applied, the concentration of each substance
221 in the mixture applied, and the total amount of pesticide
222 applied.

223 Section 4. Paragraph (a) of subsection (2) of section
224 482.091, Florida Statutes, is amended to read:

225 482.091 Employee identification cards.--

226 (2)(a) An identification cardholder must be an employee of
227 the licensee and work under the direction and supervision of the
228 licensee's certified operator in charge and shall ~~may~~ not be an
229 independent contractor. An identification cardholder shall
230 operate ~~may perform~~ only ~~pest control services~~ out of, and or
231 for customers assigned ~~arising~~ from, the licensee's licensed
232 business location. An identification cardholder shall ~~may~~ not
233 perform any pest control independently of and without the
234 knowledge of the licensee and the licensee's certified operator
235 in charge and shall ~~may~~ perform pest control only for the
236 licensee's customers.

237 Section 5. Subsections (1), (2), and (3) of section
238 482.156, Florida Statutes, are amended to read:

239 482.156 Limited certification for commercial landscape
240 maintenance personnel.--

241 (1) The department shall establish a limited certification
242 category for individual commercial landscape maintenance
243 personnel to authorize them to apply herbicides for controlling
244 weeds in plant beds and to perform integrated pest management on
245 ornamental plants using ~~the following materials:~~ insecticides
246 and fungicides having the signal word "caution" but not having
247 the word "warning" or "danger" on the label, ~~insecticidal soaps,~~

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248 ~~horticultural oils, and bacillus thuringiensis formulations.~~ The
249 application equipment that may be used by a person certified
250 pursuant to this section is limited to portable, handheld 3-
251 gallon compressed air sprayers or backpack sprayers having no
252 more than a 5-gallon capacity and does not include power
253 equipment.

254 (2) (a) A person seeking limited certification under this
255 section must pass an examination given by the department. Each
256 application for examination must be accompanied by an
257 examination fee set by rule of the department, in an amount of
258 not more than \$150 or less than \$50; ~~however, until a rule~~
259 ~~setting this fee is adopted by the department, the examination~~
260 ~~fee is \$50.~~ Prior to the department's issuing a limited
261 certification under this section, each person applying making
262 application for the certification under this section must
263 furnish proof of having a certificate of insurance which states
264 that the employer meets the requirements for minimum financial
265 responsibility for bodily injury and property damage required by
266 s. 482.071(4).

267 (b) To be eligible to take the examination, an applicant
268 must have completed 6 & classroom hours of plant bed and
269 ornamental continuing education training approved by the
270 department and provide sufficient proof, according to criteria
271 established by department rule, of having successfully completed
272 the continuing education training that the applicant has been in
273 ~~the landscape maintenance business for at least 3 years.~~

274 (b) The department shall provide the appropriate reference
275 materials for the examination and make the examination readily

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276 | accessible and available to applicants at least quarterly or as
277 | necessary in each county.

278 | (3) An application for recertification under this section
279 | must be made annually and be accompanied by a recertification
280 | fee set by rule of the department, in an amount of not more than
281 | \$75 or less than \$25; ~~however, until a rule setting this fee is~~
282 | ~~adopted by the department, the fee for recertification is \$25.~~
283 | The application must also be accompanied by proof of having
284 | completed 4 classroom hours of acceptable continuing education
285 | and the same proof of having a certificate of insurance as is
286 | required for issuance of this ~~initial~~ certification. After a
287 | grace period not exceeding 30 calendar days following the annual
288 | date that recertification is due, a late renewal charge of \$50
289 | shall be assessed and must be paid in addition to the renewal
290 | fee. Unless timely recertified, a certificate automatically
291 | expires 180 calendar days after the anniversary recertification
292 | date. Subsequent to such expiration, a certificate may be issued
293 | only upon successful reexamination and upon payment of the
294 | examination fees due.

295 | Section 6. Subsection (7) of section 482.211, Florida
296 | Statutes, is amended to read:

297 | 482.211 Exemptions.--This chapter does not apply to:

298 | (7) ~~Area~~ Mosquito control activities conducted by a local
299 | government or district established under chapter 388, by special
300 | act, or by a contractor of the local government or district.

301 | Section 7. Section 500.033, Florida Statutes, is amended
302 | to read:

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303 500.033 Florida Food Safety and Food Defense Security
 304 Advisory Council.--
 305 (1) There is created the Florida Food Safety and Food
 306 Defense Security Advisory Council for the purpose of serving as
 307 a forum for presenting, investigating, and evaluating issues of
 308 current importance to the assurance of a safe and secure food
 309 supply to the citizens of Florida. The Florida Food Safety and
 310 Food Defense Security Advisory Council shall consist of, but not
 311 be limited to: the Commissioner of Agriculture or his or her
 312 designee; the Secretary of Health or his or her designee; the
 313 Secretary of Business and Professional Regulation or his or her
 314 designee; the person responsible for domestic security with the
 315 ~~Florida~~ Department of Law Enforcement; members representing the
 316 production, processing, distribution, and sale of foods;
 317 consumers or ~~and/or~~ members of citizens groups; representatives
 318 of ~~or~~ food industry groups; scientists or other experts in
 319 aspects of food safety from state universities; representatives
 320 from local, state, and federal agencies that are charged with
 321 responsibilities for food safety or food defense security; the
 322 chairs of the Agriculture Committees of the Senate and the House
 323 of Representatives or their designees; and the chairs of the
 324 committees of the Senate and the House of Representatives with
 325 jurisdictional oversight of home defense issues or their
 326 designees. The Commissioner of Agriculture shall appoint the
 327 remaining members. The council shall make periodic reports to
 328 the Department of Agriculture and Consumer Services concerning
 329 findings and recommendations in the area of food safety and food
 330 defense security.

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331 (2) The council shall consider the development of
332 appropriate advice or recommendations on food safety or food
333 defense ~~security~~ issues. In the discharge of their duties, the
334 council members may receive for review confidential data exempt
335 from the provisions of s. 119.07(1); however, it is unlawful for
336 any member of the council to use the data for his or her
337 advantage or reveal the data to the general public.

338 Section 8. Paragraph (a) of subsection (1) of section
339 500.12, Florida Statutes, is amended to read:

340 500.12 Food permits; building permits.--

341 (1)(a) A food permit from the department is required of
342 any person who operates a food establishment or retail food
343 store, except:

344 1. Persons operating minor food outlets, including, but
345 not limited to, video stores, that sell commercially
346 prepackaged, nonpotentially hazardous candy, chewing gum, soda,
347 or popcorn, provided the shelf space for those items does not
348 exceed 12 linear feet and no other food is sold by the minor
349 food outlet.

350 2. Persons subject to continuous, onsite federal or state
351 inspection.

352 3. Persons selling only legumes in the shell, either
353 parched, roasted, or boiled.

354 4. Persons producing and selling in the state 100-percent
355 Florida sugar cane syrup directly to the consumer or at a
356 roadside stand, farmers' market, or similar location, provided
357 each container or bottle of syrup is labeled and the label
358 states the producer's name and address, the product type, and

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359 | the net weight or volume of the product and includes the
360 | statement: "This product has not been produced in a facility
361 | inspected and permitted by the Florida Department of Agriculture
362 | and Consumer Services."

363 | Section 9. Section 570.954, Florida Statutes, is created
364 | to read:

365 | 570.954 Farm-to-fuel initiative.--

366 | (1) The department may develop a farm-to-fuel initiative
367 | to enhance the market for and promote the production and
368 | distribution of renewable energy from Florida-grown crops,
369 | agricultural wastes and residues, and other biomass and to
370 | enhance the value of agricultural products or expand
371 | agribusiness in the state.

372 | (2) The department may conduct a statewide comprehensive
373 | information and education program aimed at educating the general
374 | public about the benefits of renewable energy and the use of
375 | alternative fuels.

376 | (3) The department shall coordinate with and solicit the
377 | expertise of the state energy office within the Department of
378 | Environmental Protection when developing and implementing this
379 | initiative.

380 | Section 10. Paragraphs (b) and (c) of subsection (1) of
381 | section 582.06, Florida Statutes, are amended to read:

382 | 582.06 Soil and Water Conservation Council; powers and
383 | duties.--

384 | (1) COMPOSITION.--The Soil and Water Conservation Council
385 | is created in the Department of Agriculture and Consumer
386 | Services and shall be composed of 23 members as follows:

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387 (b) Twelve ~~nonvoting ex officio~~ members shall include one
 388 representative each from the Department of Environmental
 389 Protection, the five water management districts, the Institute
 390 of Food and Agricultural Sciences at the University of Florida,
 391 the United States Department of Agriculture Natural Resources
 392 Conservation Service, the Florida Association of Counties, and
 393 the Florida League of Cities, and two representatives of
 394 environmental interests.

395 (c) All members shall be appointed by the commissioner. ~~Ex~~
 396 ~~officio~~ Members appointed pursuant to paragraph (b) shall be
 397 appointed by the commissioner from recommendations provided by
 398 the organization or interest represented.

399 Section 11. Paragraph (h) is added to subsection (2) of
 400 section 810.09, Florida Statutes, to read:

401 810.09 Trespass on property other than structure or
 402 conveyance.--

403 (2)

404 (h) The offender commits a felony of the third degree,
 405 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 406 if the property trespassed upon is an agricultural chemicals
 407 manufacturing facility that is legally posted and identified in
 408 substantially the following manner: "THIS AREA IS A DESIGNATED
 409 AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO
 410 TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

411 Section 12. Subsection (12) is added to section 810.011,
 412 Florida Statutes, to read:

413 810.011 Definitions.--As used in this chapter:

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414 (12) "Agricultural chemicals manufacturing facility" means
415 any facility, and any properties or structures associated with
416 the facility, used for the manufacture, processing, or storage
417 of agricultural chemicals classified in Industry Group 287
418 contained in the Standard Industrial Classification Manual,
419 1987, as published by the Office of Management and Budget,
420 Executive Office of the President.

421 Section 13. Subsection (3) of section 828.30, Florida
422 Statutes, is amended to read:

423 828.30 Rabies vaccination of dogs, cats, and ferrets.--

424 (3) Upon vaccination against rabies, the licensed
425 veterinarian shall provide the animal's owner and the animal
426 control authority with a rabies vaccination certificate. Each
427 animal control authority and veterinarian shall use the Form 51,
428 "Rabies Vaccination Certificate," of the National Association of
429 State Public Health Veterinarians (NASPHV) or an equivalent form
430 approved by the local government that contains all the
431 information required by the NASPHV Rabies Vaccination
432 Certificate Form 51. The veterinarian who administers the rabies
433 vaccine to an animal as required under this section may affix
434 his or her signature stamp in lieu of an actual signature.

435 Section 14. Austin Dewey Gay Memorial Agricultural
436 Inspection Station designated; Department of Agriculture and
437 Consumer Services to erect suitable markers.--

438 (1) The agricultural inspection station located at or near
439 mile marker 1 on Interstate Highway 10 in Escambia County is
440 designated as the "Austin Dewey Gay Memorial Agricultural
441 Inspection Station."

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442 (2) The Department of Agriculture and Consumer Services is
443 directed to erect suitable markers designating the Austin Dewey
444 Gay Memorial Agricultural Inspection Station as described in
445 subsection (1).

446 Section 15. Subsection (11) of section 482.211, Florida
447 Statutes, is repealed.

448 Section 16. This act shall take effect July 1, 2006.