

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.)

Prepared By: The Professional Staff of the Agriculture Committee

BILL: SB 1376

INTRODUCER: Senator Dean

SUBJECT: Agriculture

DATE: April 7, 2008

REVISED: 4-10-08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Fav/1 amendment
2.			GA	
3.			RC	
4.				
5.				
6.				

I. Summary:

This strike-everything amendment addresses the following issues related to agriculture. It:

- ⊘ Prohibits a county government to impose a tax, assessment or fee for stormwater management on agricultural land, if the agricultural operation has an agricultural discharge permit or implements best-management practices adopted by the state;
- ⊘ Expands eligibility for exemption from a local business tax receipt for persons who sell farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom;
- ⊘ Delineates requirements for a tomato farmer, packer, repacker, or handler to be considered in compliance with state food safety microbial standards and guidelines;
- ⊘ Authorizes the Department of Agriculture and Consumer Services (department) to adopt by rule comprehensive best-management practices for agricultural production and food safety;
- ⊘ Creates a five-year pilot program for use of *Casuarina cunninghamiana* as a windbreak to protect fresh fruit groves in Indian River, St. Lucie, and Martin Counties where citrus canker is determined by the department to be widespread.
- ⊘ Revises the definition of “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products; and
- ⊘ Expands the materials used in agricultural operations that can be openly burned.

This strike-everything amendment amends sections 163.3162, 205.064, 570.07, 581.091, 604.15, and 823.145, Florida Statutes.

This strike-everything amendment creates section 500.70, of the Florida Statutes.

II. Present Situation:

Section 1

The 2003 Legislature created the “Agricultural Lands and Practices Act”. It prohibits a county from adopting an ordinance, resolution, regulation, rule, or policy that would limit an activity of a bona fide farm operation on land that is classified as agricultural land, if such activity is regulated through best-management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under ch. 120, F.S., as part of a statewide or regional program. It also prohibits a county from regulating an activity that is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency. This bill eliminates a county’s authority to “enforce” a current ordinance, resolution, regulation, rule, or policy that would limit an activity of a bona fide farm operation on agricultural lands.

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs. The revenue thus generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit are the only ones who pay. This bill addresses the duplication of regulation that agricultural operations are experiencing because five counties are charging stormwater management fees even though the agricultural operation has an agricultural discharge permit or is implementing best-management practices. If an agricultural operation is paying to manage its own stormwater, it should not be required to duplicate this effort by paying a county stormwater tax, assessment, or fee.

Section 2

Section 205.022, F.S., defines “person” to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to “natural persons” engaged in the selling of certain agricultural products. Currently, cities and counties are interpreting the term “natural person” to exclude corporations, partnerships and other non-natural persons for exemption purposes.

Sections 3 & 4

The 2007 Legislature amended s. 570.07, F.S., to allow the Department of Agriculture and Consumer Services to use any of its trained personnel to perform inspections and to establish and adopt requirements for enhancing food safety of tomatoes. It also authorized the Division of Fruit and Vegetables to perform food safety inspections, under the Tomato Good Agricultural Practices inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. The division has worked with the Florida tomato industry in creating and implementing good agricultural practices guidelines and standards and conducts an annual audit and inspection program to ensure compliance. The bill delineates requirements for a compliance with state food safety microbial standards and guidelines and specifies that the tomato farmer, packer, repacker, or handler is considered to have acted in good faith if good agricultural

practices and best-management practices have been used. This bill clarifies the department's authority to adopt rules concerning comprehensive best management practices for agricultural production and food safety.

Section 5

Citrus canker, caused by a bacteria, is a leaf, fruit, and stem spotting disease that affects numerous species, cultivars, and hybrids of citrus and citrus relatives. The vast majority of the infection occurs by wind-blown rains during severe tropical storms, hurricanes, and tornadoes. Workers can also carry the bacteria from one location to another on hands, clothes, and equipment.¹

The 1900-foot rule was suspended in January 2006 and the state's eradication of citrus canker-affected trees ended. The new Citrus Health Response Plan does not require removal of affected trees. Thus, growers must use their best judgment in management of citrus canker. Wind breaks are highly effective in reducing the spread of canker, but more importantly, they reduce the severity of the infection in endemic situations.²

Casuarina cunninghamiana is commonly used in Argentina as an effective, fast-growing windbreak. The number of canker lesions is ten times greater on the side of the tree exposed to the prevailing winds than on the protected side of the same tree. In tests in nursery situations, artificial windbreaks greatly diminished the distance of spread of canker down the nursery row and reduced disease to only a few scattered lesions. For this reason, the citrus canker research community in Florida believes that windbreaks are the most critical component for management of the disease.³

Casuarina cunninghamiana is one of the largest species of the genus *Casuarina*. It was introduced to the United States near the turn of the century and is widely distributed in southern Florida and is also found in California, Arizona, and Hawaii.⁴ Long-favored for its use in erosion control along beaches, it is now prohibited for use by the Department of Environmental Protection in Florida due to its invasive nature, rapid growth rate, and non-native status.

Section 6

The Agricultural License and Bond Law covers business transitions for growers selling to companies with a business presence in Florida. Currently, the nature of transitions for foliage products is grower to grower sales or sales outside of the provision of the existing law. This bill reinstates the exemption which existed prior to changes that were made by the 2005 Legislature.

Section 7

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or, orders.

¹ <http://www.plant-materials.nrcs.usda.gov/pubs/flpmstn7469.pdf>

² <http://edis.ifas.ufl.edu/CG040>

³ <http://www.plant-materials.nrcs.usda.gov/pubs/flpmstn7469.pdf>

⁴ <http://www.fs.fed.us/database/feis/plants/tree/casspp/all.html>

Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. This bill conforms s. 823.145, F.S., concerning disposal by open burning of mulch plastic used in agricultural operations to s. 403.707(2)(e), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to prohibit a county from enforcing any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land, if such activity is regulated by best management practices or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Department of Environmental Protection. It prohibits a county government to impose an assessment or fee for stormwater management on agricultural land, if the agricultural operation has an agricultural discharge permit or implements best management practices that have been developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under chapter 120.

Section 2 amends s. 205.064, F.S., to expand eligibility for exemption from a local business tax receipt for persons who sell farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom.

Section 3 amends s. 500.70, F.S., to provide incentive for tomato farmers, packers, repackers, or handlers to implement applicable good agricultural practices and best management practices. The bill delineates requirements for such person to be in compliance with state food safety microbial standards or guidelines unless a violation of or noncompliance with such measures can be shown through inspections.

Section 4 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services to adopt by rule comprehensive best management practices for agricultural production and food safety.

Section 5 amends s. 581.091, F.S., to specify conditions under which *Casuarina cunninghamiana* may be used as a windbreak for commercial groves. Requires a person to obtain a special permit from the Department of Agriculture and Consumer Services (department) to plant *Casuarina cunninghamiana* provided the plants are produced in an authorized registered nursery and certified by the department as being vegetatively propagated from certified male plants. Defines a commercial citrus grove as a contiguous planting of 100 or more citrus trees where citrus fruit is produced for sale.

For a five-year period, special permits authorizing a person to plant *Casuarina cunninghamiana* shall be issued only as part of a pilot program for fresh fruit groves in Indian River, St. Lucie, and Martin Counties where citrus canker is determined by the department to be widespread. Requires the pilot program to be reevaluated annually, and a comprehensive review is required in

2013. Provides for a permit fee, not to exceed \$500. Requires the special permit to be renewed every five years. Provides criteria for transferring ownership of the property.

Each application must include a baseline survey of all lands within 500 feet of the proposed *Casuarina cunninghamiana* windbreak showing the location and identification to species of all existing *Casuarina spp.*

Nurseries authorized to produce *Casuarina cunninghamiana* must obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. Prohibits the importation of *Casuarina cunninghamiana* from any areas outside the state to be used as a propagation source tree. Requires each male source tree to be registered by the department as being a horticulturally true-to-type male plant and to be labeled with a source tree registration number. Provides for a permit fee, not to exceed \$200. Requires special permits to be renewed annually. Provides for an annual fee, not to exceed \$50 for each *Casuarina cunninghamiana* registered as a source tree. Prohibits nurseries to sell *Casuarina cunninghamiana* to a person without a special permit. Requires source tree registration numbers to be on each invoice or other certification documentation provided to the buyer.

All *Casuarina cunninghamiana* must be destroyed by the property owner within six months after:

- ⊖ The property owner takes permanent action to no longer use the site for commercial citrus production;
- ⊖ The site has not been used for commercial citrus production for a period of five years; or
- ⊖ The department determines that the trees have become invasive.

Upon failure to comply, the department will proceed to destroy the plants. The cost of destruction will be assessed, collected, and enforced against the owner. Authorizes the department to record a lien against the property upon failure to pay the assessed cost.

The use of *Casuarina cunninghamiana* for windbreaks does not preclude research or release of biological agents to control *Casuarina sp.* Provides that the use of *Casuarina cunninghamiana* for windbreaks may not interfere with any other agency or local government efforts to manage or control noxious weeds or invasive plants.

The department shall develop and implement a monitoring protocol to determine the invasiveness of *Casuarina cunninghamiana*. Provides minimum monitoring criteria. Requires property owners to destroy trees if the department determines that female flowers or cones have been produced on any permitted *Casuarina cunninghamiana*.

If at any time the department determines that hybridization has occurred during the pilot program between *Casuarina cunninghamiana* planted as a windbreak and other *Casuarina sp.*, the department shall expeditiously initiate research to determine the invasiveness of the hybrid. Requires the pilot program to be suspended if it is determined that the hybrids have a high potential to become invasive.

The department or its agents are authorized to require a permit holder to provide verified statements of the planted acreage subject to the special permit and may review the permit holder's business or planting records at his or her place of business during normal business hours in order to determine the acreage planted. Failure to produce such information is cause for suspension or revocation of the special permit.

Section 6 amends s. 604.15, F.S., to revise the definition of "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products.

Section 7 amends s. 823.145, F.S., to make this section of law consistent with s. 403.707(2)(e), F.S., relating to materials used in agricultural operations that can be openly burned. The bill provides that the open burning must not be a public nuisance or adversely affect the environment or the public health.

Section 8 provides that this act shall take effect July 1, 2008.

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:

None.

B. Private Sector Impact:

The strike-everything amendment provides relief to tropical foliage dealers from the agricultural dealers provisions of chapter 604, F.S., including the fees required by s. 604.19, F.S.

The Department of Agriculture and Consumer Services estimates that five nurseries would participate in the pilot program for *Casuarina cunninghamiana* and be required to obtain a permit to propagate this plant. They would pay \$200 per year for a special permit for a total of \$1,000 for nursery special permits. It is estimated that four different groves (based on current DEP permits) would require a special permit not exceeding

\$500 every five years. It is estimated that four additional groves each year would be permitted to plant *Casuarina cunninghamiana* and would pay the necessary permit fees for a total of \$2,000 for grove special permits.

C. Government Sector Impact:

	FY 08-09	FY 09-10	FY 10-11
Revenues:			
Agricultural Product Dealers License	\$(14,500)	\$(23,730)	\$(24,441)
Special Permit – Nurseries (5 @ \$200)	\$1,000	\$1,000	\$1,000
Special Permit – Groves (4 @ \$500)	\$2,000	\$2,000	\$2,000
Total Revenues:	\$(11,500)	\$(20,730)	\$(21,441)
Expenditures:			
Tracking of the nurseries that propagate the trees and costs associated with monitoring the plantings around the groves to assure that they are male source trees.	\$3,000	\$3,000	\$3,000

The department reports that returning tropical foliage to exempted status from the provisions of the License and Bond law will result in a decrease in the revenue generated to support the License and Bond program and will have an adverse effect on the program’s ability to achieve self-sufficiency.

The Revenue Estimating Conference has indicated that the fiscal impact of this legislation on counties and municipalities is indeterminate.

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:

This analysis was drawn to a strike-everything amendment adopted by the Agriculture Committee on April 9, 2008. (Barcode 711388)

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