

By the Committee on General Government Appropriations; and
Senator Dean

601-08344-08

20081376c1

1 A bill to be entitled
2 An act relating to agriculture; amending s. 163.3162,
3 F.S.; prohibiting county government imposition of an
4 assessment or fee for stormwater management on
5 agricultural land meeting certain requirements; amending
6 s. 205.064, F.S.; expanding the applicability of an
7 exemption from a local business tax receipt for the
8 privilege of selling specified products; creating s.
9 500.70, F.S.; providing that a tomato farmer, packer,
10 repacker, or handler acts in good faith if certain
11 requirements are met; amending s. 570.07, F.S.;
12 authorizing the Department of Agriculture and Consumer
13 Services to adopt rules relating to the comprehensive
14 best-management practice for agricultural production and
15 food safety; amending s. 581.091, F.S.; providing
16 conditions for use of *Casuarina cunninghamiana* as a
17 windbreak for commercial citrus groves; providing for
18 permitting and permit fees; providing for destruction of
19 *Casuarina cunninghamiana*; providing that use as a
20 windbreak does not preclude research or release of agents
21 to control *Casuarina* spp.; providing that the use of
22 *Casuarina cunninghamiana* for windbreaks does not interfere
23 with or restrict efforts to manage or control noxious
24 weeds or invasive plants; prohibiting any other agency or
25 local government from removing *Casuarina cunninghamiana*
26 planted as a windbreak under special permit; requiring the
27 removal of *Casuarina cunninghamiana* under certain
28 conditions; requiring that the permitholder pay the costs
29 of removal; providing for a lien against the property of a

601-08344-08

20081376c1

30 permitholder for failure to pay such costs; amending s.
31 604.15, F.S.; revising the term "agricultural products" to
32 exempt tropical foliage from regulation; amending s.
33 823.145, F.S.; expanding the materials used in
34 agricultural operations that can be openly burned;
35 providing limitations; providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Subsection (4) of section 163.3162, Florida
40 Statutes, is amended to read:

41 163.3162 Agricultural Lands and Practices Act.--

42 (4) DUPLICATION OF REGULATION.--Except as otherwise
43 provided in this section and s. 487.051(2), and notwithstanding
44 any other law, including any provision of chapter 125 or this
45 chapter, a county may not exercise any of its powers to adopt any
46 ordinance, resolution, regulation, rule, or policy to prohibit,
47 restrict, regulate, or otherwise limit an activity of a bona fide
48 farm operation on land classified as agricultural land pursuant
49 to s. 193.461, if such activity is regulated through implemented
50 best management practices, interim measures, or regulations
51 developed by the Department of Environmental Protection, the
52 Department of Agriculture and Consumer Services, or a water
53 management district and adopted under chapter 120 as part of a
54 statewide or regional program; or if such activity is expressly
55 regulated by the United States Department of Agriculture, the
56 United States Army Corps of Engineers, or the United States
57 Environmental Protection Agency. A county may not impose an
58 assessment or fee for stormwater management on land classified as

601-08344-08

20081376c1

59 agricultural land pursuant to s. 193.461 if the agricultural
60 operation has an agricultural discharge permit or implements
61 best-management practices developed by the Department of
62 Environmental Protection, the Department of Agriculture and
63 Consumer Services, or a water management district and adopted
64 under chapter 120 as part of a statewide or regional program,
65 unless the ordinance imposing the assessment or fee provides
66 credits for the water quality and flood control value of the
67 best-management practice against the fee or assessment charged
68 for stormwater management.

69 (a) When an activity of a farm operation takes place within
70 a wellfield protection area as defined in any wellfield
71 protection ordinance adopted by a county, and the implemented
72 best management practice, regulation, or interim measure does not
73 specifically address wellfield protection, a county may regulate
74 that activity pursuant to such ordinance. This subsection does
75 not limit the powers and duties provided for in s. 373.4592 or
76 limit the powers and duties of any county to address an emergency
77 as provided for in chapter 252.

78 (b) This subsection may not be construed to permit an
79 existing farm operation to change to a more excessive farm
80 operation with regard to traffic, noise, odor, dust, or fumes
81 where the existing farm operation is adjacent to an established
82 homestead or business on March 15, 1982.

83 (c) This subsection does not limit the powers of a
84 predominantly urbanized county with a population greater than
85 1,500,000 and more than 25 municipalities, not operating under a
86 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.
87 VIII of the Constitution of 1885, as preserved by s. 6(e), Art.

601-08344-08

20081376c1

88 VIII of the Constitution of 1968, which has a delegated pollution
89 control program under s. 403.182 and includes drainage basins
90 that are part of the Everglades Stormwater Program, to enact
91 ordinances, regulations, or other measures to comply with the
92 provisions of s. 373.4592, or which are necessary to carrying out
93 a county's duties pursuant to the terms and conditions of any
94 environmental program delegated to the county by agreement with a
95 state agency.

96 (d) For purposes of this subsection, a county ordinance
97 that regulates the transportation or land application of domestic
98 wastewater residuals or other forms of sewage sludge shall not be
99 deemed to be duplication of regulation.

100 Section 2. Subsection (1) of section 205.064, Florida
101 Statutes, is amended to read:

102 205.064 Farm, aquacultural, grove, horticultural,
103 floricultural, tropical piscicultural, and tropical fish farm
104 products; certain exemptions.--

105 (1) A local business tax receipt is not required of any
106 ~~natural~~ person for the privilege of engaging in the selling of
107 farm, aquacultural, grove, horticultural, floricultural, tropical
108 piscicultural, or tropical fish farm products, or products
109 manufactured therefrom, except intoxicating liquors, wine, or
110 beer, when such products were grown or produced by such ~~natural~~
111 person in the state.

112 Section 3. Section 500.70, Florida Statutes, is created to
113 read:

114 500.70 Food safety compliance relating to tomatoes.--A
115 tomato farmer, packer, repacker, or handler that implements
116 applicable good agricultural practices and best-management

601-08344-08

20081376c1

117 practices according to rules adopted by the department is
118 considered to have acted in good faith, with reasonable care, and
119 in compliance with state food safety microbial standards or
120 guidelines unless a violation of or noncompliance with such
121 measures can be shown through inspections.

122 Section 4. Subsection (10) of section 570.07, Florida
123 Statutes, is amended to read:

124 570.07 Department of Agriculture and Consumer Services;
125 functions, powers, and duties.--The department shall have and
126 exercise the following functions, powers, and duties:

127 (10) To act as adviser to producers and distributors, when
128 requested, and to assist them in the economical and efficient
129 distribution of their agricultural products and to encourage
130 cooperative effort among producers to gain economical and
131 efficient production of agricultural products. The department may
132 adopt by rule, pursuant to s. 120.536(1) and s. 120.54,
133 comprehensive best-management practices for agricultural
134 production and food safety.

135 Section 5. Subsection (5) is added to section 581.091,
136 Florida Statutes, to read:

137 581.091 Noxious weeds and infected plants or regulated
138 articles; sale or distribution; receipt; information to
139 department; withholding information.--

140 (5) (a) Notwithstanding any other provision of state law or
141 rule, a person may obtain a special permit from the department to
142 plant Casuarina cunninghamiana as a windbreak for a commercial
143 citrus grove if the plants are produced in an authorized
144 registered nursery and certified by the department as being
145 vegetatively propagated from male plants. A "commercial citrus

601-08344-08

20081376c1

146 grove" means a contiguous planting of 100 or more citrus trees
147 where citrus fruit is produced for sale.

148 (b) For a 5-year period, special permits authorizing a
149 person to plant Casuarina cunninghamiana shall be issued only as
150 part of a pilot program for fresh fruit groves in areas of Indian
151 River, St. Lucie, and Martin Counties where citrus canker is
152 determined by the department to be widespread. The pilot program
153 shall be reevaluated annually, and a comprehensive review shall
154 be conducted in 2013. The purpose of the annual and 5-year review
155 is to determine if the use of Casuarina cunninghamiana as an
156 agricultural pest and disease windbreak poses any adverse
157 environmental consequences. At the end of the 5-year pilot
158 program, if the Noxious Weed and Invasive Plant Review Committee,
159 created by the department, and the Department of Environmental
160 Protection, in consultation with a representative of the citrus
161 industry who has a Casuarina cunninghamiana windbreak, determines
162 that the potential is low for adverse environmental impacts from
163 planting Casuarina cunninghamiana as windbreaks, the department
164 may by rule allow the use of Casuarina cunninghamiana windbreaks
165 for commercial citrus groves in other areas of the state. If it
166 is determined at the end of the 5-year pilot program that
167 additional time is needed to further evaluate Casuarina
168 cunninghamiana, the department shall remain the lead agency.

169 (c) Each application for a special permit shall be
170 accompanied by a fee in an amount determined by the department by
171 rule, not to exceed \$500. A special permit shall be required for
172 each noncontiguous commercial citrus grove and shall be renewed
173 every 5 years. The property owner is responsible for maintaining
174 and producing for inspection the original nursery invoice with

601-08344-08

20081376c1

175 certification documentation. If ownership of the property is
176 transferred, the seller must notify the department and provide to
177 the buyer a copy of the special permit and copies of all invoices
178 and certification documentation before the closing of the sale.

179 (d) Each application shall include a baseline survey of all
180 lands within 500 feet of the proposed Casuarina cunninghamiana
181 windbreak showing the location and identification to species of
182 all existing Casuarina spp.

183 (e) Nurseries authorized to produce Casuarina
184 cunninghamiana must obtain a special permit from the department
185 certifying that the plants have been vegetatively propagated from
186 sexually mature male source trees currently grown in the state.
187 The importation of Casuarina cunninghamiana from any area outside
188 the state to be used as a propagation source tree is prohibited.
189 Each male source tree must be registered by the department as
190 being a horticulturally true-to-type male plant and be labeled
191 with a source tree registration number. Each nursery application
192 for a special permit shall be accompanied by a fee in an amount
193 determined by the department by rule, not to exceed \$200. Special
194 permits shall be renewed annually. The department shall set the
195 amount of an annual fee by rule, which may not exceed \$50, for
196 each Casuarina cunninghamiana registered as a source tree.
197 Nurseries may sell Casuarina cunninghamiana only to a person who
198 has a special permit as specified in paragraphs (a) and (b). The
199 source tree registration numbers of the parent plants must be
200 documented on each invoice or other certification documentation
201 provided to the buyer.

202 (f) All Casuarina cunninghamiana must be destroyed by the
203 property owner within 6 months after:

601-08344-08

20081376c1

204 1. The property owner takes permanent action to no longer
205 use the site for commercial citrus production;

206 2. The site has not been used for commercial citrus
207 production for a period of 5 years; or

208 3. The department determines that the Casuarina
209 cunninghamiana on the site has become invasive. The department's
210 determination shall be based on, but need not limited to, the
211 recommendation of the Noxious Weed and Invasive Plant Review
212 Committee and the Department of Environmental Protection, in
213 consultation with a representative of the citrus industry who has
214 a Casuarina cunninghamiana windbreak.

215
216 If the owner or person in charge refuses or neglects to comply,
217 the director or his or her authorized representative may, under
218 authority of the department, proceed to destroy the plants. The
219 expense of the destruction shall be assessed, collected, and
220 enforced against the owner by the department. If the owner does
221 not pay the assessed cost, the department may record a lien
222 against the property.

223 (g) The use of Casuarina cunninghamiana for windbreaks does
224 not preclude the department from issuing permits for the research
225 or release of biological control agents to control Casuarina spp.
226 in accordance with s. 581.083.

227 (h) The use of Casuarina cunninghamiana for windbreaks may
228 not restrict or interfere with any other agency or local
229 government effort to manage or control noxious weeds or invasive
230 plants, including Casuarina cunninghamiana, and another agency
231 or local government may not remove any Casuarina cunninghamiana

601-08344-08

20081376c1

232 planted as a windbreak under a special permit issued by the
233 department.

234 (i) The department shall develop and implement a
235 monitoring protocol to determine the invasiveness of Casuarina
236 cunninghamiana. The monitoring protocol shall, at a minimum,
237 require:

238 1. Inspection of the planting site by department
239 inspectors within 30 days following initial planting or any
240 subsequent planting of Casuarina cunninghamiana to ensure the
241 criteria of the special permit have been met.

242 2. Annual site inspections of planting sites and all lands
243 within 500 feet of the planted windbreak by department
244 inspectors who have been trained to identify Casuarina spp. and
245 to make determinations of whether Casuarina cunninghamiana has
246 spread beyond the permitted windbreak location.

247 3. The removal of any new seedlings found within 500 feet
248 of the planted windbreak, which shall be identified to the
249 species level and evaluated to determine if hybridization has
250 occurred.

251 4. The department to submit an annual report and a final
252 5-year evaluation identifying any adverse effects resulting from
253 the planting of Casuarina cunninghamiana for windbreaks and
254 documenting all inspections and the results of those inspections
255 to the Noxious Weed and Invasive Plant Review Committee, the
256 Department of Environmental Protection, and a designated
257 representative of the citrus industry who has a Casuarina
258 cunninghamiana windbreak.

259 (j) If the department determines that female flowers or
260 cones have been produced on any Casuarina cunninghamiana that

601-08344-08

20081376c1

261 | have been planted under a special permit issued by the
262 | department, the property owner shall destroy the trees. The
263 | department shall notify the property owner of the timeframe and
264 | method of destruction.

265 | (k) If at any time the department determines that
266 | hybridization has occurred during the pilot program between
267 | Casuarina cunninghamiana planted as a windbreak and other
268 | Casuarina spp., the department shall expeditiously initiate
269 | research to determine the invasiveness of the hybrid. The
270 | information obtained from this research shall be evaluated by
271 | the Noxious Weed and Invasive Plant Review Committee, the
272 | Department of Environmental Protection, and a designated
273 | representative of the citrus industry who has a Casuarina
274 | cunninghamiana windbreak. If the department determines that the
275 | hybrids have a high potential to become invasive based on, but
276 | not limited to, the recommendation of the Noxious Weed and
277 | Invasive Plant Review Committee, the Department of Environmental
278 | Protection, and a designated representative of the citrus
279 | industry who has a Casuarina cunninghamiana windbreak, this
280 | pilot program shall be permanently suspended.

281 | (l) Each application for a special permit must be
282 | accompanied by a fee as described in paragraph (c) and an
283 | agreement that the property owner shall abide by all permit
284 | conditions, including the removal of Casuarina cunninghamiana,
285 | if invasive populations or other adverse environmental factors
286 | are determined to be present by the department as a result of
287 | the use of Casuarina cunninghamiana as windbreaks. The
288 | application must include, on a form provided by the department,
289 | the name of the applicant, the applicant's address or the

601-08344-08

20081376c1

290 address of the applicant's principal place of business, a
291 statement of the estimated cost of removing and destroying the
292 Casuarina cunninghamiana that is the subject of the special
293 permit, and the basis for calculating or determining that
294 estimate. If the applicant is a corporation, partnership, or
295 other business entity, the applicant must also provide in the
296 application the name and address of each officer, partner, or
297 managing agent. The applicant shall notify the department within
298 30 business days after any change of address or change in the
299 principal place of business. The department shall mail all
300 notices to the applicant's last known address.

301 1. Upon obtaining a permit, the permit holder must annually
302 maintain the Casuarina cunninghamiana authorized by a special
303 permit as required in the permit. If the permit holder ceases to
304 maintain the Casuarina cunninghamiana as required by the special
305 permit, if the permit expires, or if the permit holder ceases to
306 abide by the conditions of the special permit, the permit holder
307 shall remove and destroy the Casuarina cunninghamiana in a
308 timely manner as specified in the permit.

309 2. If the department determines that:

310 a. The permit holder is no longer maintaining the Casuarina
311 cunninghamiana and has not removed and destroyed the Casuarina
312 cunninghamiana authorized by the special permit;

313 b. The continued use of Casuarina cunninghamiana as
314 windbreaks presents an imminent danger to public health, safety,
315 or welfare; or

316 c. The permit holder has exceeded the conditions of the
317 authorized special permit,

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601-08344-08

20081376c1

319 the department may issue an immediate final order, which shall
320 be immediately appealable or enjoicable as provided by chapter
321 120, directing the permitholder to immediately remove and
322 destroy the Casuarina cunninghamiana authorized to be planted
323 under the special permit. A copy of the immediate final order
324 shall be mailed to the permitholder.

325 3. If, upon issuance by the department of an immediate
326 final order to the permitholder, the permitholder fails to
327 remove and destroy the Casuarina cunninghamiana subject to the
328 special permit within 60 days after issuance of the order, or a
329 shorter period as public health, safety, or welfare requires,
330 the department may remove and destroy the Casuarina
331 cunninghamiana that are the subject of the special permit. If
332 the permitholder makes a written request to the department for
333 an extension of time to remove and destroy the Casuarina
334 cunninghamiana which demonstrates specific facts showing why the
335 Casuarina cunninghamiana could not be reasonably removed and
336 destroyed in the applicable timeframe, the department may extend
337 the time for removing and destroying Casuarina cunninghamiana
338 subject to a special permit. The reasonable costs and expenses
339 incurred by the department for removing and destroying Casuarina
340 cunninghamiana, subject to a special permit, shall be paid out
341 of the Citrus Inspection Trust Fund and shall be reimbursed by
342 the party to whom the immediate final order is issued. If the
343 party to whom the immediate final order has been issued fails to
344 reimburse the state within 60 days, the department may record a
345 lien on the property. The lien shall be enforced under state law
346 by the department.

601-08344-08

20081376c1

347 4. In order to carry out the purposes of this subsection,
348 the department or its agents may require from any permitholder
349 verified statements of the planted acreage subject to the
350 special permit and may review the permitholder's business or
351 planting records at his or her place of business during normal
352 business hours in order to determine the acreage planted. The
353 failure of a permitholder to furnish such statement or to make
354 such records available is cause for suspension of the special
355 permit. If the department finds such failure to be willful, the
356 special permit may be revoked.

357 Section 6. Subsection (1) of section 604.15, Florida
358 Statutes, is amended to read:

359 604.15 Dealers in agricultural products; definitions.--For
360 the purpose of ss. 604.15-604.34, the following words and terms,
361 when used, shall be construed to mean:

362 (1) "Agricultural products" means the natural products of
363 the farm, nursery, grove, orchard, vineyard, garden, and apiary
364 (raw or manufactured); sod; ~~tropical foliage~~; horticulture; hay;
365 livestock; milk and milk products; poultry and poultry products;
366 the fruit of the saw palmetto (meaning the fruit of the *Serenoa*
367 *repens*); limes (meaning the fruit *Citrus aurantifolia*, variety
368 Persian, Tahiti, Bearss, or Florida Key limes); and any other
369 nonexempt agricultural products produced in the state, except
370 tobacco, sugarcane, tropical foliage, timber and timber
371 byproducts, forest products as defined in s. 591.17, and citrus
372 other than limes.

373 Section 7. Section 823.145, Florida Statutes, is amended to
374 read:

375 823.145 Disposal by open burning of certain materials ~~mulch~~

601-08344-08

20081376c1

376 ~~plastic~~ used in agricultural operations.--Polyethylene
377 agricultural mulch plastic; damaged, nonsalvageable, untreated
378 wood pallets; and packing material that cannot be feasibly
379 recycled, which are used in connection with agricultural
380 operations related to the growing, harvesting, or maintenance of
381 crops, may be disposed of by open burning provided that no public
382 nuisance or any condition adversely affecting the environment or
383 the public health is created thereby and that state or federal
384 national ambient air quality standards are not violated.

385 Section 8. This act shall take effect July 1, 2008.