

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 761 Agriculture
SPONSOR(S): Policy & Budget Council; Environment & Natural Resources Council; Pickens
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	<u>7 Y, 0 N</u>	<u>Kaiser</u>	<u>Reese</u>
2) <u>Environment & Natural Resources Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Kaiser / Smith</u>	<u>Dixon / Hamby</u>
3) <u>Policy & Budget Council</u>	<u>29 Y, 0 N, As CS</u>	<u>Diez-Arguelles</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/HB 761 addresses various issues relating to agriculture.

The bill repeals Section 106.082, F.S., which limits campaign contributions to candidates for the office of Commissioner of Agriculture by businesses or persons licensed as a food outlets or convenience store pursuant to chapter 500.

The bill provides conditions for the imposition by local governments of assessments or fees for stormwater management on land classified as agricultural. The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations.

The bill exempts from the local business tax any person, rather than any "natural person" as in current law, involved in the sale of agricultural products which were grown by said person.

CS/HB 761 affirms that a tomato farmer, packer, repacker or handler implementing Tomato Good Agricultural Practices (T-GAP) and BMPs is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill also gives the department rule-making authority to implement the BMP program.

The bill reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law. The bill amends Chapter 823, F.S., to mirror the language in Chapter 403, F.S., regarding the materials used in agricultural production allowed to be burned in the open.

The bill establishes a permitted 5-year pilot program within the Department of Agriculture and Consumer Services (department) to allow the planting of *Casuarina cunninghamiana* as a windbreak for commercial citrus groves.

The Revenue Estimating Conference has determined that the provisions of this bill will reduce state revenues by \$23,730 in FY 2009-10 and will have a negative indeterminate impact on local government revenues.

This bill may be a mandate requiring a 2/3ds vote of the membership. SEE MANDATES SECTION.

The effective date of this legislation is July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill provides for the exemption agricultural producers currently have from obtaining a local business tax receipt to sell products they grow or produce to apply to all persons rather than just natural persons.

Safeguard individual liberty: The bill exempts producers of tropical foliage from Florida's License and Bond Law. The bill allows citrus producers to use *Casuarina cunninghamiana* as a windbreak against the spread of citrus canker.

Promote personal responsibility: By implementing Tomato Good Agricultural Practices (T-GAPs) and Best Management Practices (BMPs), tomato growers, packers, repackers and handlers are considered to be in compliance with food safety standards. Citrus producers must obtain a permit issued by the Department of Agriculture and Consumer Services (department) to plant *Casuarina cunninghamiana* as a windbreak for citrus groves.

B. EFFECT OF PROPOSED CHANGES:

Section 1:

Section 106.082, F.S., limits campaign contributions to any candidate for the office of Commissioner of Agriculture from a business which is inspected, licensed, or otherwise authorized to do business as a food outlet or convenience store pursuant to Chapter 500, F.S. Campaign contributions are limited to \$100. A candidate for the office of Commissioner of Agriculture and employees of the Department of Agriculture are prohibited from soliciting campaign contributions in excess of \$100 from such businesses.

This bill repeals Section 106.082, F.S.

Section 2:

In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural¹, if such activity is regulated through BMPs or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands even if the stormwater from such agricultural lands does not enter the urban stormwater infrastructure.

HB 761 prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The bill provides that a local government may impose an assessment or fee for stormwater management on land classified as agricultural provided that the agricultural lands contribute to municipal separate stormwater system permitted facilities and if there are credits against the fee or assessment. The local government must determine the amount of the credits after consultation with the Department of Agriculture.

Local governments are prohibited from imposing a stormwater management fee or assessment on agricultural lands used for forestry or unimproved pasture and on agricultural lands governed by an

¹ Section 193.461, F.S.

agricultural discharge permit or environmental resource permit which specifically addresses the stormwater management requirements of the municipal separate stormwater system permit.

The powers of a county to enforce applicable wetland protection ordinances, regulation or rules adopted prior to April 1, 2008 are not limited by the provisions of the bill.

Section 3:

Florida law² exempts any natural person from obtaining a local business tax receipt (an occupational license) to sell agricultural products³ that were grown in the state by the natural person. While the statutes provide a definition for “person,” no definition is provided for “natural person.” Hence, the statute is interpreted differently in different counties in regards to the exemption. The bill strikes the word “natural” to exempt any “person” from obtaining a local business tax receipt.

Sections 4 & 5:

During the 2007 legislative session, CS/HB 651 was enacted authorizing the Division of Food Safety (division) within the department to perform food safety inspections, under the Tomato Good Agricultural Practices (T-GAP) inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. Over the past year, the division has been working with the Florida tomato industry to create and implement good agricultural practices, guidelines and standards, as well as to implement an annual audit and inspection program to ensure compliance.

HB 761 affirms that a tomato farmer, packer, repacker or handler implementing T-GAPs and BMPs is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill also gives the department rule-making authority to implement the BMP program.

Section 6:

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the department were not able to contain the disease in the urban setting. The eradication program was stymied by lengthy legal battles and unprecedented weather conditions. In January 2006, the USDA took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal. In May 2006, the Legislature enacted CS/CS/SB 994, which dismantled the citrus canker eradication plan codified in Florida statutes and set about implementing a Citrus Health Response Program (CHRP). CHRP concentrates on the development and implementation of minimum standards for citrus inspection, regulatory oversight, disease management and education and training.

The *Casuarina* species is a rapid-growing pine-like tree native to Australia. Although commonly known as Australian pines, these plants are angiosperms rather than conifers. Australian pines were introduced to Florida in the late 1800's and widely planted to form windbreaks around canals, agricultural fields, roads, and houses. Under current law, without a special permit from the Bureau of Invasive Plant Management (bureau) within the Department of Environmental Protection, planting or selling Australian pine trees is illegal in Florida. According to the bureau, Australian pines:⁴

² Section 205.064, F.S.

³ Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.

⁴ <http://www.dep.state.fl.us/lands/invaspec/2ndlevpgs/pdfs/AustralianPine.pdf>

- often displace native beach plant communities that provide critical wildlife habitat for threatened and endangered plant and animal species;
- encourage beach erosion by displacing deep-rooted vegetation;
- have a dense shallow root system that interferes with the ability of the endangered American crocodiles and sea turtles to construct coastal nests; and
- provide little or no native wildlife habitat.

Of the three types of Australian pines occurring in Florida, *Casuarina cunninghamiana* is the smallest and least vigorous. *Casuarina cunninghamiana* is dioecious⁵ and, while this type of Australian pine has a slight tendency to form root suckers when growing elsewhere, they are apparently uncommon in Florida.⁶

In Argentina, where agricultural producers have been battling citrus canker for more than 30 years, *Casuarina cunninghamiana* is used effectively as a windbreak to stem the spread of citrus canker.

The bill establishes a permitted 5-year pilot program within the department to allow the planting of *Casuarina cunninghamiana* (trees) as a windbreak for commercial citrus groves growing fresh fruit in specified areas of the state. The trees must come from an authorized registered nursery and be certified by the department as being from certified male plants. Each commercial citrus grove is required to have a permit, renewable every 5 years. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the permit and copies of all invoices and certification documentation prior to the closing of the sale. Nurseries authorized to produce the trees must obtain a special permit from the department, which must be renewed annually, certifying that the trees are from sexually mature male source trees. Each male source tree must be registered by the department and labeled with a source tree registration number. Nurseries may only sell the trees to persons with a special permit issued by the department. At the end of the 5-year pilot program, if it is determined that the potential is low for adverse environmental impacts from planting the trees as windbreaks, the department may, by rule, allow the use of the tree windbreaks for commercial citrus groves in other areas of the state.

The bill requires that all trees 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 on the site have become invasive. The determination of invasiveness shall be based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee (committee), DEP, and in consultation with a representative of the citrus industry who has a tree windbreak.

If the owner or person in charge refuses or neglects to comply with the destruction of the trees, the director of the Division of Plant Industry may, by authority of the department, destroy the trees. The department is authorized to assess the owner for expenses incurred in the destruction of the trees. If the owner fails to pay the assessed cost, the department is authorized to record a lien against the property.

The bill provides that the use of trees for windbreaks will not restrict or interfere with any other agency or local government efforts to manage or control noxious weeds or invasive plants. Other agencies or local governments are not allowed to remove any trees planted as a windbreak under special permit issued by the department.

⁵ Dioecious means that male and female flowers occur on separate plants.

⁶ *Casuarina cunninghamiana* Miq. (River sheoak) in Florida and its Potential as a Windbreak Plant for Citrus Groves, February 2007, William S. Castle, Kenneth Langeland, Donald Rockwood, University of Florida

The department is authorized to develop and implement a monitoring protocol to determine invasiveness of the trees. At a minimum, the protocol shall require:

- Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of trees to ensure the criteria of the special permit have been met.
- Annual site inspections of planting sites and all lands within 500 feet of the planted windbreak by trained department inspectors.
- Any new seedlings found within 500 feet of the planted windbreak shall be removed, identified to the species level and evaluated to determine if hybridization has occurred.
- The department shall submit an annual report and a final five year evaluation identifying any adverse effects resulting from the planting of the trees for windbreaks and documenting all inspections and the results of those inspections to the committee, DEP, and a designated representative of the citrus industry, who has a tree windbreak.

If the department determines that female flowers or cones have been produced on any trees that have been planted under a special permit issued by the department, the property owner shall be responsible for destroying the trees. The department shall notify the property owner of the timeframe and method of destruction.

If, at any time, the department determines that hybridization has occurred during the pilot program between trees planted as a windbreak and other *Casuarina spp.*, the department will expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research shall be evaluated by the committee, DEP, and a designated representative of the citrus industry, who has a tree windbreak. If the department determines that the hybrids have a high potential to become invasive, based on, but not limited to, the recommendation of the committee, DEP, and a designated representative of the citrus industry, who has a tree windbreak, the pilot program shall be permanently suspended.

Each application for a special permit must be accompanied by a fee and an agreement that the property owner will abide by all permit conditions. The bill provides for information that must be included on the application. The applicant must notify the department within 30 business days of any change of address or change in the principal place of business.

If the department determines that the property owner is no longer maintaining the trees according to the criteria of the special permit or determines that the continued use of the trees presents an imminent danger to public health, safety or welfare, the department may issue an immediate final order (IFO), appealable or enjoined as provided by Chapter 120, F.S., directing the permitholder to immediately remove and destroy the trees authorized to be planted under the special permit. If the permitholder fails to remove and destroy the trees in a timely manner after receipt of the IFO, the department may remove and destroy the trees that are subject to the special permit. The permitholder may request an extension of time from the department for removing and destroying the trees, which may be granted by the department depending on the circumstances for the request.

The reasonable costs and expenses incurred by the department for removing and destroying the trees subject to a special permit shall be paid out of the Citrus Inspection Trust Fund (CITF), which shall be reimbursed by the party to which the IFO was issued. If the party to which the IFO has been issued fails to reimburse the state within 60 days, the department may record a lien against the property.

The department may require any permitholder to provide verified statements of planted acreage subject to the special permit and may review the permitholder's business or planting records at her/his place of business during normal business hours in order to determine the acreage planted. The failure of the permitholder to furnish such statement or to make such records available is cause for suspension of the special permit. The department may revoke the special permit if such failure is found to be willful.

Section 7:

The Florida License and Bond Law (law)⁷ was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 legislative session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term “agricultural products” to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and they have requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

Section 8:

There are currently two sections in statute⁸ that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning. The bill amends the language in Chapter 823, F.S., to mirror the language in Chapter 403, F.S., which is the most recent expression of the Legislature.

C. SECTION DIRECTORY:

Section 1: Repeals s. 106.082, F.S.

Section 2: Amends s. 163.3162, F.S.

Section 3: Amends s. 205.064, F.S.

Section 4: Amends s. 500.70, F.S.

Section 5: Amends s. 570.07, F.S.

Section 6: Amends s. 581.091, F.S.

Section 7: Amends s. 604.15, F.S.

Section 8: Amends s. 823.145, F.S.

Section 9: Provides an effective date of July 1, 2008.

⁷ Sections 604.15-604.34, F.S.

⁸ ss. 403.707(2)(e) and 823.145, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>
1. Revenues:			
Agricultural Product Dealers License	\$ (14,500)	\$ (23,730)	\$ (24,441)
Citrus:			
Special permit – Nurseries	1,000	1,000	1,000
Special permit – Groves	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
Total Revenues	\$ (11,500)	\$ (20,730)	\$ (21,441)
2. Expenditures:			
Citrus:			
Expenses	\$ 3,000	\$ 3,000	\$ 3,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has determined that the provisions of this bill that (1) prohibit a county or municipality from imposing an assessment, fee or tax for storm water management on certain lands, and (2) expand to all persons the exemption from local business tax receipts applicable to farmers will have a negative indeterminate impact on local government revenues.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed local business taxes.

In order to plant *Casuarina cunninghamiana* as a windbreak in citrus groves, citrus producers must obtain a permit from the department. The cost of the permit may not exceed \$500 and must be renewed every five years.

D. FISCAL COMMENTS:

The Division of Marketing (division) within the department reports that there are approximately 491 tropical foliage dealers who are currently licensed by the division and a possible 350 dealers who are prospective licensees. By exempting tropical foliage dealers from the definition of agricultural products, the division anticipates experiencing a loss of revenue in the General Inspection Trust Fund of \$14,500 for FY 2008-09, \$23,730 for FY 2009-10 and \$24,441 for FY 2010-11.

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.

In regards to the permitting of the *Casuarina cunninghamiana*, the department anticipates the revenue to be approximately \$3,000 per year for special permits. The department estimates five nurseries would propagate the trees, each paying \$200 per year for a special permit. Based on groves currently permitted by the Bureau of Invasive Plant Management under the Department of Environmental Protection, the department estimates four groves may require a special permit, each paying up to \$500 every five years. The department anticipates that each year four additional groves may be permitted to plant *Casuarina cunninghamiana*.

The expenditures associated with the *Casuarina cunninghamiana* are the department's estimates for tracking the nurseries that propagate the trees as well as monitoring the plantings around the groves to ensure only male source trees are being used.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because the bill reduces the authority that cities and counties have to raise revenues. The bill (1) prohibits a county or municipality from imposing an assessment, fee or tax for storm water management on certain lands, and (2) expands to all persons the exemption from local business tax receipts applicable to farmers. The Revenue Estimating Conference has determined that the fiscal impact to local governments is negative indeterminate.

In the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida constitution prohibits the legislature from enacting, amending or repealing a law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989, unless the law is approved by a two-thirds vote of the membership of each house.

2. Other:

None

B. RULE-MAKING AUTHORITY:

In section 570.07, F.S., the department is given rule-making authority in regards to best management practices for agricultural production and food safety.

The department is given rule-making authority to establish the fees for the permit to plant *Casuarina cunninghamiana*, the nursery permit fee and the annual fee for registered source trees. The fees may not exceed \$500, \$200 and \$50, respectively.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The department states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over \$97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. The program is currently processing claims totaling \$149,409 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 26, 2008, the Environment and Natural Resources Council adopted a strike-all amendment to HB 761 and passed the bill as a committee substitute (CS). The strike-all amendment included the five traveling amendments that were adopted by the Committee on Agribusiness. The differences between the CS and the bill include:

- The CS clarifies that a county may not impose a stormwater tax on agricultural land. The language in the bill did not indicate the tax had to be related to stormwater.
- The CS requires all operators of electronic computer-based sweepstakes to register with the department regardless of the total amount of offered prizes, with the filing fee applying to each computer terminal used in the game promotion. Additionally, electronic sweepstakes operators must post a \$1 million trust account or surety bond per promotion, unless exempted by the department, as well as obtain independent lab confirmation from a department-approved testing facility that the game is a finite sweepstakes game, unless exempt from current statute. This language was not in the original bill.
- The CS clarifies that the exemption in section 9 relates to “building code permits.” The bill exempted any municipal permits.
- The CS removes obsolete language from s. 583.13, F.S., regarding the grading of dressed poultry. This amendment was recommended by the United States Department of Agriculture and was not included in the original bill.
- The CS establishes a permitted 5-year pilot program within the Department of Agriculture and Consumer Services to allow the planting of *Casuarina cunninghamiana* as a windbreak for commercial citrus groves. This is similar to HB 353 and was not included in the original bill.

On April 21, 2008, the Policy and Budget Council adopted an amendment to delete everything after the enacting clause and add the provisions that are now the bill. This analysis reflects the changes made by the amendment.