

1 A bill to be entitled
2 An act relating to agriculture; repealing s. 106.082,
3 F.S., relating to campaign contributions to Commissioner
4 of Agriculture candidates; amending s. 163.3162, F.S.;
5 prohibiting county government enforcement of certain
6 ordinances, resolutions, regulations, rules, or policies
7 relating to certain activities of bona fide farm operation
8 on land classified as agricultural; prohibiting the
9 imposition or assessment of certain fees on agricultural
10 land under certain circumstances; providing exceptions;
11 amending s. 205.064, F.S.; expanding eligibility for
12 exemption from a local business tax receipt for the
13 privilege of selling specified products; creating s.
14 500.70, F.S.; delineating requirements for a tomato
15 farmer, packer, repacker, or handler to be considered in
16 compliance with state food safety microbial standards and
17 guidelines; amending s. 570.07, F.S.; providing that the
18 Department of Agriculture and Consumer Services may adopt
19 by rule comprehensive best management practices for
20 agricultural production and food safety; amending s.
21 581.091, F.S.; providing conditions for use of *Casuarina*
22 *cunninghamiana* as a windbreak for commercial citrus
23 groves; defining the term "commercial citrus grove";
24 providing for permitting and permit fees; providing for
25 destruction of *Casuarina cunninghamiana*; specifying
26 responsibility and liability for removal and destruction
27 of such trees; providing that use as a windbreak does not
28 preclude research or release of agents to control

29 | *Casuarina spp.*; providing that the use of *Casuarina*
 30 | *cunninghamiana* for windbreaks does not interfere with or
 31 | restrict efforts to manage or control noxious weeds or
 32 | invasive plants; prohibiting any other agency or local
 33 | government from removing *Casuarina cunninghamiana* planted
 34 | as a windbreak under special permit; amending s. 604.15,
 35 | F.S.; revising a definition to make tropical foliage
 36 | exempt from regulation under provisions relating to
 37 | dealers in agricultural products; amending s. 823.145,
 38 | F.S.; expanding the materials used in agricultural
 39 | operations that can be openly burned; providing certain
 40 | limitations on such burning; providing an effective date.

41 |

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

43 |

44 | Section 1. Section 106.082, Florida Statutes, is repealed.

45 | Section 2. Subsection (4) of section 163.3162, Florida
 46 | Statutes, is amended to read:

47 | 163.3162 Agricultural Lands and Practices Act.--

48 | (4) DUPLICATION OF REGULATION.--Except as otherwise
 49 | provided in this section and s. 487.051(2), and notwithstanding
 50 | any other law, including any provision of chapter 125 or this
 51 | chapter, a county may not exercise any of its powers to adopt or
 52 | enforce any ordinance, resolution, regulation, rule, or policy
 53 | to prohibit, restrict, regulate, or otherwise limit an activity
 54 | of a bona fide farm operation on land classified as agricultural
 55 | land pursuant to s. 193.461, if such activity is regulated
 56 | through implemented best management practices, interim measures,

57 | or regulations developed by the Department of Environmental
58 | Protection, the Department of Agriculture and Consumer Services,
59 | or a water management district and adopted under chapter 120 as
60 | part of a statewide or regional program; or if such activity is
61 | expressly regulated by the United States Department of
62 | Agriculture, the United States Army Corps of Engineers, or the
63 | United States Environmental Protection Agency. A county may not
64 | impose an assessment or fee for stormwater management on land
65 | classified as agricultural land pursuant to s. 193.461 if the
66 | agricultural operation has an agricultural discharge permit or
67 | an environmental resource permit or implements best management
68 | practices developed by the Department of Environmental
69 | Protection, the Department of Agriculture and Consumer Services,
70 | or a water management district pursuant to s. 403.067 and
71 | adopted under chapter 120 as part of a statewide or regional
72 | program, except under the following conditions: the ordinance
73 | imposing the assessment or fee is adopted by a county required
74 | to obtain a municipal separate storm sewer system permit;
75 | discharges from the agricultural lands contribute to the
76 | municipal separate stormwater system permitted facilities; and
77 | the ordinance provides credits for the water quality and flood
78 | control provided by implementation of stormwater control
79 | measures against the fee or assessment charged for stormwater
80 | management. A county shall not impose a stormwater management
81 | fee or assessment on lands used for silviculture or unimproved
82 | pasture.

83 | (a) When an activity of a farm operation takes place
84 | within a wellfield protection area as defined in any wellfield

85 protection ordinance adopted by a county, and the implemented
86 best management practice, regulation, or interim measure does
87 not specifically address wellfield protection, a county may
88 regulate that activity pursuant to such ordinance. This
89 subsection does not limit the powers and duties provided for in
90 s. 373.4592 or limit the powers and duties of any county to
91 address an emergency as provided for in chapter 252.

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

97 (c) This subsection does not limit the powers of a
98 predominantly urbanized county with a population greater than
99 1,500,000 and more than 25 municipalities, not operating under a
100 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.
101 VIII of the Constitution of 1885, as preserved by s. 6(e), Art.
102 VIII of the Constitution of 1968, which has a delegated
103 pollution control program under s. 403.182 and includes drainage
104 basins that are part of the Everglades Stormwater Program, to
105 enact ordinances, regulations, or other measures to comply with
106 the provisions of s. 373.4592, or which are necessary to
107 carrying out a county's duties pursuant to the terms and
108 conditions of any environmental program delegated to the county
109 by agreement with a state agency.

110 (d) For purposes of this subsection, a county ordinance
111 that regulates the transportation or land application of

112 domestic wastewater residuals or other forms of sewage sludge
 113 shall not be deemed to be duplication of regulation.

114 (e) This subsection does not limit the powers of a county
 115 to enforce applicable wetland protection ordinances,
 116 regulations, or rules duly adopted prior to April 1, 2008.

117 Section 3. Subsection (1) of section 205.064, Florida
 118 Statutes, is amended to read:

119 205.064 Farm, aquacultural, grove, horticultural,
 120 floricultural, tropical piscicultural, and tropical fish farm
 121 products; certain exemptions.--

122 (1) A local business tax receipt is not required of any
 123 ~~natural~~ person for the privilege of engaging in the selling of
 124 farm, aquacultural, grove, horticultural, floricultural,
 125 tropical piscicultural, or tropical fish farm products, or
 126 products manufactured therefrom, except intoxicating liquors,
 127 wine, or beer, when such products were grown or produced by such
 128 ~~natural~~ person in the state.

129 Section 4. Section 500.70, Florida Statutes, is created to
 130 read:

131 500.70 Food safety compliance relating to tomatoes.-- A
 132 tomato farmer, packer, repacker, or handler that implements
 133 applicable good agricultural practices and best management
 134 practices according to rules adopted by the department is
 135 considered to have acted in good faith, with reasonable care,
 136 and in compliance with state food safety microbial standards or
 137 guidelines unless a violation of or noncompliance with such
 138 measures can be shown through inspections.

139 Section 5. Subsection (10) of section 570.07, Florida
 140 Statutes, is amended to read:

141 570.07 Department of Agriculture and Consumer Services;
 142 functions, powers, and duties.--The department shall have and
 143 exercise the following functions, powers, and duties:

144 (10) To act as adviser to producers and distributors, when
 145 requested, and to assist them in the economical and efficient
 146 distribution of their agricultural products and to encourage
 147 cooperative effort among producers to gain economical and
 148 efficient production of agricultural products. The department
 149 may adopt by rule, pursuant to ss. 120.536(1) and 120.54,
 150 comprehensive best management practices for agricultural
 151 production and food safety.

152 Section 6. Subsection (5) is added to section 581.091,
 153 Florida Statutes, to read:

154 581.091 Noxious weeds and infected plants or regulated
 155 articles; sale or distribution; receipt; information to
 156 department; withholding information.--

157 (5) (a) Notwithstanding any other provision of state law or
 158 rule, a person may obtain a special permit from the department
 159 to plant *Casuarina cunninghamiana* as a windbreak for a
 160 commercial citrus grove provided the plants are produced in an
 161 authorized registered nursery and certified by the department as
 162 being vegetatively propagated from male plants. A "commercial
 163 citrus grove" means a contiguous planting of 100 or more citrus
 164 trees where citrus fruit is produced for sale.

165 (b) For a 5-year period, special permits authorizing a
 166 person to plant *Casuarina cunninghamiana* shall be issued only as

167 part of a pilot program for fresh fruit groves in areas of
168 Indian River, St. Lucie, and Martin Counties where citrus canker
169 is determined by the department to be widespread. The pilot
170 program shall be reevaluated annually and a comprehensive review
171 shall be conducted in 2013. The purpose of the annual and 5-year
172 reviews is to determine if the use of *Casuarina cunninghamiana*
173 as an agricultural pest and disease windbreak poses any adverse
174 environmental consequences. At the end of the 5-year pilot
175 program, if the Noxious Weed and Invasive Plant Review
176 Committee, created by the department, and the Department of
177 Environmental Protection, in consultation with a representative
178 of the citrus industry who has a *Casuarina cunninghamiana*
179 windbreak, determine that the potential is low for adverse
180 environmental impacts from planting *Casuarina cunninghamiana* as
181 windbreaks, the department may, by rule, allow the use of
182 *Casuarina cunninghamiana* windbreaks for commercial citrus groves
183 in other areas of the state. If it is determined at the end of
184 the 5-year pilot program that additional time is needed to
185 further evaluate *Casuarina cunninghamiana*, the department will
186 remain the lead agency.

187 (c) Each application for a special permit shall be
188 accompanied by a fee in an amount determined by the department,
189 by rule, not to exceed \$500. A special permit shall be required
190 for each noncontiguous commercial citrus grove and shall be
191 renewed every 5 years. The property owner is responsible for
192 maintaining and producing for inspection the original nursery
193 invoice with certification documentation. If ownership of the
194 property is transferred, the seller must notify the department

195 and provide the buyer with a copy of the special permit and
196 copies of all invoices and certification documentation prior to
197 the closing of the sale.

198 (d) Each application shall include a baseline survey of
199 all lands within 500 feet of the proposed *Casuarina*
200 *cunninghamiana* windbreak showing the location and identification
201 to species of all existing *Casuarina spp.*

202 (e) Nurseries authorized to produce *Casuarina*
203 *cunninghamiana* must obtain a special permit from the department
204 certifying that the plants have been vegetatively propagated
205 from sexually mature male source trees currently grown in the
206 state. The importation of *Casuarina cunninghamiana* from any area
207 outside the state to be used as a propagation source tree is
208 prohibited. Each male source tree must be registered by the
209 department as being a horticulturally true to type male plant
210 and be labeled with a source tree registration number. Each
211 nursery application for a special permit shall be accompanied by
212 a fee in an amount determined by the department, by rule, not to
213 exceed \$200. Special permits shall be renewed annually. The
214 department shall, by rule, set the amount of an annual fee, not
215 to exceed \$50, for each *Casuarina cunninghamiana* registered as a
216 source tree. Nurseries may only sell *Casuarina cunninghamiana* to
217 a person with a special permit as specified in paragraphs (a)
218 and (b). The source tree registration numbers of the parent
219 plants must be documented on each invoice or other certification
220 documentation provided to the buyer.

221 (f) All *Casuarina cunninghamiana* must be destroyed by the
222 property owner within 6 months after:

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

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

227 3. The department determines that the *Casuarina*
228 *cunninghamiana* on the site has become invasive. This
229 determination shall be based on, but not limited to, the
230 recommendation of the Noxious Weed and Invasive Plant Review
231 Committee and the Department of Environmental Protection and in
232 consultation with a representative of the citrus industry who
233 has a *Casuarina cunninghamiana* windbreak.

234
235 If the owner or person in charge refuses or neglects to comply,
236 the director or her or his authorized representative may, under
237 authority of the department, proceed to destroy the plants. The
238 expense of the destruction shall be assessed, collected, and
239 enforced against the owner by the department. If the owner does
240 not pay the assessed cost, the department may record a lien
241 against the property.

242 (g) The use of *Casuarina cunninghamiana* for windbreaks
243 shall not preclude the department from issuing permits for the
244 research or release of biological control agents to control
245 *Casuarina spp.* in accordance with s. 581.083.

246 (h) The use of *Casuarina cunninghamiana* for windbreaks
247 shall not restrict or interfere with any other agency or local
248 government effort to manage or control noxious weeds or invasive
249 plants, including *Casuarina cunninghamiana*, nor shall any other
250 agency or local government remove any *Casuarina cunninghamiana*

251 planted as a windbreak under special permit issued by the
252 department.

253 (i) The department shall develop and implement a
254 monitoring protocol to determine invasiveness of *Casuarina*
255 *cunninghamiana*. The monitoring protocol shall at a minimum,
256 require:

257 1. Inspection of the planting site by department
258 inspectors within 30 days following initial planting or any
259 subsequent planting of *Casuarina cunninghamiana* to ensure the
260 criteria of the special permit have been met.

261 2. Annual site inspections of planting sites and all lands
262 within 500 feet of the planted windbreak by department
263 inspectors who have been trained to identify *Casuarina spp.* and
264 to make determinations of whether *Casuarina cunninghamiana* has
265 spread beyond the permitted windbreak location.

266 3. Any new seedlings found within 500 feet of the planted
267 windbreak to be removed, identified to the species level, and
268 evaluated to determine if hybridization has occurred.

269 4. The department to submit an annual report and a final
270 5-year evaluation identifying any adverse effects resulting from
271 the planting of *Casuarina cunninghamiana* for windbreaks and
272 documenting all inspections and the results of those inspections
273 to the Noxious Weed and Invasive Plant Review Committee, the
274 Department of Environmental Protection, and a designated
275 representative of the citrus industry who has a *Casuarina*
276 *cunninghamiana* windbreak.

277 (j) If the department determines that female flowers or
278 cones have been produced on any *Casuarina cunninghamiana* that

279 have been planted under a special permit issued by the
280 department, the property owner shall be responsible for
281 destroying the trees. The department shall notify the property
282 owner of the timeframe and method of destruction.

283 (k) If at any time the department determines that
284 hybridization has occurred during the pilot program between
285 *Casuarina cunninghamiana* planted as a windbreak and other
286 *Casuarina spp.*, the department shall expeditiously initiate
287 research to determine the invasiveness of the hybrid. The
288 information obtained from this research shall be evaluated by
289 the Noxious Weed and Invasive Plant Review Committee, the
290 Department of Environmental Protection, and a designated
291 representative of the citrus industry who has a *Casuarina*
292 *cunninghamiana* windbreak. If the department determines that the
293 hybrids have a high potential to become invasive, based on, but
294 not limited to, the recommendation of the Noxious Weed and
295 Invasive Plant Review Committee, the Department of Environmental
296 Protection, and a designated representative of the citrus
297 industry who has a *Casuarina cunninghamiana* windbreak, this
298 pilot program shall be permanently suspended.

299 (l) Each application for a special permit must be
300 accompanied by a fee as described in paragraph (c) and an
301 agreement that the property owner will abide by all permit
302 conditions including the removal of *Casuarina cunninghamiana* if
303 invasive populations or other adverse environmental factors are
304 determined to be present by the department as a result of the
305 use of *Casuarina cunninghamiana* as windbreaks. The application
306 must include, on a form provided by the department, the name of

307 the applicant and the applicant's address or the address of the
308 applicant's principal place of business; a statement of the
309 estimated cost of removing and destroying the *Casuarina*
310 *cunninghamiana* that is the subject of the special permit; and
311 the basis for calculating or determining that estimate. If the
312 applicant is a corporation, partnership, or other business
313 entity, the applicant must also provide in the application the
314 name and address of each officer, partner, or managing agent.
315 The applicant shall notify the department within 30 business
316 days of any change of address or change in the principal place
317 of business. The department shall mail all notices to the
318 applicant's last known address.

319 1. Upon obtaining a permit, the permit holder must annually
320 maintain the *Casuarina cunninghamiana* authorized by a special
321 permit as required in the permit. If the permit holder ceases to
322 maintain the *Casuarina cunninghamiana* as required by the special
323 permit, if the permit expires, or if the permit holder ceases to
324 abide by the conditions of the special permit, the permit holder
325 shall remove and destroy the *Casuarina cunninghamiana* in a
326 timely manner as specified in the permit.

327 2. If the department:

328 a. Determines that the permit holder is no longer
329 maintaining the *Casuarina cunninghamiana* subject to the special
330 permit and has not removed and destroyed the *Casuarina*
331 *cunninghamiana* authorized by the special permit;

332 b. Determines that the continued use of *Casuarina*
333 *cunninghamiana* as windbreaks presents an imminent danger to
334 public health, safety, or welfare; or

335 c. Determines that the permitholder has exceeded the
336 conditions of the authorized special permit;
337

338 The department may issue an immediate final order, which shall
339 be immediately appealable or enjoicable as provided by chapter
340 120, directing the permitholder to immediately remove and
341 destroy the *Casuarina cunninghamiana* authorized to be planted
342 under the special permit. A copy of the immediate final order
343 shall be mailed to the permitholder.

344 3. If, upon issuance by the department of an immediate
345 final order to the permitholder, the permitholder fails to
346 remove and destroy the *Casuarina cunninghamiana* subject to the
347 special permit within 60 days after issuance of the order, or
348 such shorter period as is designated in the order as public
349 health, safety, or welfare requires, the department may remove
350 and destroy the *Casuarina cunninghamiana* that are the subject of
351 the special permit. If the permitholder makes a written request
352 to the department for an extension of time to remove and destroy
353 the *Casuarina cunninghamiana* that demonstrates specific facts
354 showing why the *Casuarina cunninghamiana* could not reasonably be
355 removed and destroyed in the applicable timeframe, the
356 department may extend the time for removing and destroying
357 *Casuarina cunninghamiana* subject to a special permit. The
358 reasonable costs and expenses incurred by the department for
359 removing and destroying *Casuarina cunninghamiana* subject to a
360 special permit shall be paid out of the Citrus Inspection Trust
361 Fund and shall be reimbursed by the party to which the immediate
362 final order is issued. If the party to which the immediate final

363 order has been issued fails to reimburse the state within 60
 364 days, the department may record a lien on the property. The lien
 365 shall be enforced by the department.

366 4. In order to carry out the purposes of this paragraph,
 367 the department or its agents may require a permit holder to
 368 provide verified statements of the planted acreage subject to
 369 the special permit and may review the permit holder's business or
 370 planting records at her or his place of business during normal
 371 business hours in order to determine the acreage planted. The
 372 failure of a permit holder to furnish such statement or to make
 373 such records available is cause for suspension of the special
 374 permit. If the department finds such failure to be willful, the
 375 special permit may be revoked.

376 Section 7. Subsection (1) of section 604.15, Florida
 377 Statutes, is amended to read:

378 604.15 Dealers in agricultural products; definitions.--For
 379 the purpose of ss. 604.15-604.34, the following words and terms,
 380 when used, shall be construed to mean:

381 (1) "Agricultural products" means the natural products of
 382 the farm, nursery, grove, orchard, vineyard, garden, and apiary
 383 (raw or manufactured); sod; ~~tropical foliage~~; horticulture; hay;
 384 livestock; milk and milk products; poultry and poultry products;
 385 the fruit of the saw palmetto (meaning the fruit of the Serenoa
 386 repens); limes (meaning the fruit Citrus aurantifolia, variety
 387 Persian, Tahiti, Bearss, or Florida Key limes); and any other
 388 nonexempt agricultural products produced in the state, except
 389 tobacco, sugarcane, tropical foliage, timber and timber

CS/CS/HB 761, Engrossed 1

2008

390 byproducts, forest products as defined in s. 591.17, and citrus
391 other than limes.

392 Section 8. Section 823.145, Florida Statutes, is amended
393 to read:

394 823.145 Disposal by open burning of certain materials
395 ~~mulch plastic~~ used in agricultural operations.--Polyethylene
396 agricultural mulch plastic; damaged, nonsalvageable, untreated
397 wood pallets; and packing material that cannot be feasibly
398 recycled, which are used in connection with agricultural
399 operations related to the growing, harvesting, or maintenance of
400 crops, may be disposed of by open burning provided that no
401 public nuisance or any condition adversely affecting the
402 environment or the public health is created thereby and that
403 state or federal national ambient air quality standards are not
404 violated.

405 Section 9. This act shall take effect July 1, 2008.