

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1447 Department of Agriculture and Consumer Services
SPONSOR(S): General Government Policy Council, Agriculture & Natural Resources, Policy Committee, Nelson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	15 Y, 1 N, As CS	Kaiser	Reese
2) General Government Policy Council	13 Y, 0 N, As CS	Kaiser	Hamby
3) Full Appropriations Council on General Government & Health Care		Bellflower	Leznoff
4)			
5)			

SUMMARY ANALYSIS

CS/CS/HB 1447 addresses several issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- clarifies requirements for supervision provided by certified operators in charge of pest control businesses;
- authorizes the department to adopt rules requiring pest control companies to perform wood destroying organism inspections prior to issuing a protection contract;
- increases the minimum requirements for insurance coverage for pest control businesses;
- provides for the establishment, inspection and regulation of centralized pest control service centers;
- allows the department to take action against pest control service center or business licensees, under certain circumstances;
- allows on-line submission of certain applications to the department's Division of Licensing;
- requires all 40 hours of training be completed prior to private investigator intern and security officer licensees submitting their applications;
- authorizes the department to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes;
- authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards and authorizes the department to impose administrative fines¹ or issue a written notice or warning for violations;
- specifies the quantity of antifreeze to be submitted to the department for testing;
- authorizes the department to collect fees for the analysis and inspection of ethanol;
- removes language restricting the stop-sale order for brake fluid to be confined to the location where the violation occurred;
- allows the inspection and registration of sites in the natural environment where aquatic plants are tended for harvest;
- grants the department's Division of Forestry authority to delegate to local governments the issuance of authorizations for open burning;
- establishes a certified pile burner program within the Division of Forestry;
- amends the Florida Farm Winery program to recognize wine produced from agricultural products other than grapes;
- exempts tropical foliage from the provisions of the License and Bond law;
- grants the department the authority to issue a stop-operation order for amusement rides; and,
- increases fees in several areas of the department's jurisdiction.

The bill has a positive fiscal impact on state government and no fiscal impact on local government. The bill generates \$1,299,332 in trust fund revenues from various changes in fees and total expenditures of \$30,147 in FY 2009-2010 which the department has indicated can be absorbed through the proposed FY 2009-2010 General Appropriations Act. The effective date of this legislation is July 1, 2009.

¹ Administrative fines may not exceed \$5,000 per violation.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pest Control

The law currently specifies that "personal" and "direct" supervision of pest control employees is the duty of the Certified Operator in Charge (COIC). Since the term "personal" is not defined in Chapter 482, F.S., it could be construed to mean "in person" rather than by telephone or other electronic methods of communication. Many pest control companies use delegated supervisors to oversee pest control activities, review records of activities, or use telephones or other means of communication to supervise pest control technicians. The intent of the language is that pest control technicians be monitored, but not necessarily "in person." The bill removes the terms "personal" and "direct" to clarify that a COIC can monitor a pest control technician's activities not only by direct supervision but also through other methods.

Chapter 482, F.S., is not clear regarding the duties a COIC may perform. Without clarification, well-qualified COICs may be unable to perform such functions at business locations other than the one to which they are assigned, thus hindering efforts to improve training and quality in companies with more than one business location. The bill clarifies that a COIC may have other duties and responsibilities for the licensee, such as training and quality control at other licensed locations.

Current statute does not provide rulemaking authority to the Department of Agriculture and Consumer Services (department) to require a wood destroying organism inspection of a structure prior to offering a protection contract. If an inspection is not completed prior to offering a contract, it is possible that the pest control company may negotiate contracts that will result in too great a risk for the financial resources of the company. Although most companies will conduct an inspection or provide a treatment prior to issuing a protection contract, those that do not have a competitive advantage in the short run, since they can rapidly increase the number of contracts offered without the constraint of actual investment of time and effort. The bill amends current statute giving the department the authority to adopt rules requiring companies to conduct an inspection for wood destroying organisms prior to issuing a protection contract.

The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers. The bill increases:

- Bodily injury from \$100,000 to \$250,000 per person, \$300,000 to \$500,000 per occurrence;
- Property damage from \$50,000 to \$250,000 per occurrence, \$100,000 to \$500,000 in the aggregate; and,

- Combined single-limit coverage from \$400,000 to \$500,000 in the aggregate.

Florida law does not currently provide for the establishment or operation of a centralized pest control service center. Pest control service centers provide licensees with a more efficient means of providing service to consumers while still protecting the consumer through specific requirements for licensure and accountability. The bill provides for the establishment, inspection and regulation of centralized pest control service centers, allowing licensed centers to solicit pest control business and provide service to consumers for one or more business locations. The bill establishes a licensing fee² and biennial renewal fee³. The department is authorized to deny or refuse to renew a license in certain circumstances. The department is given rulemaking authority for implementing provisions related to the recordkeeping and monitoring of pest control service centers. The bill also provides criteria for disciplinary action against a pest control service center or a pest control business licensee of the service center.

Several years ago, the Florida Fish and Wildlife Conservation Commission provided certification for persons engaged in the control of nuisance wildlife. Interest in the certification dwindled over the years and the certification was discontinued. Several persons, still engaged in the control of nuisance wildlife, have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected. The bill establishes a limited certification category within the department authorizing persons to use nonchemical methods for controlling pest birds and rodents. The certification process includes successful completion of an examination, an examination fee, a biennial recertification, continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

Current statutory language limits the authority of the department to take administrative action against a licensee for the actions of an employee where the department has clear and convincing evidence that a licensee “knowingly encouraged, aided or abetted” a violation by the employee. The language limits action by the department to the employee or the COIC. Since this language was codified in statute 16 years ago, due to the impeachability of testimony from an employee who has been discharged, the department has been unable to charge a licensee even when evidence has been obtained from former employees that the licensee was directing a violation. Currently, the statute allows the licensee to use employees as a disposable shield to prevent administrative action for violations that originate as a result of directions given by the licensee or due to lax oversight and training of employees. The bill allows the department to take action against a licensee for the actions of an employee when the employee violates the provisions of Chapter 482, F.S., and associated rules. The licensee is protected if the employee acts outside the scope of employment or in violation of an employer rule that is consistently enforced by the employer.

Division of Licensing

The Division of Licensing (division) oversees the regulation of private security, private investigative and recovery services, as well as the issuance of licenses to carry concealed weapons or concealed firearms. Current law is not clear regarding the management of a security agency by an actively employed law enforcement officer. The bill clarifies this provision stating that an actively employed law enforcement officer is not allowed to manage a security agency.

Current law⁴ requires applications for private security, private investigative and/or repossession services be submitted in writing. With the advent of internet accessibility, the bill changes current law to accommodate the submission of applications on-line. Additionally, the bill removes non-relevant information from the application form and updates names and notations that were outdated.

Current law allows certain classes of private investigative and security officers to take their required educational training in two parts: 24 hours prior to application and 16 hours post application. It is difficult for the division to monitor the completion of the post application training. The bill requires

² The license fee must be at least \$500 and not more than \$1,000.

³ The renewal fee must be at least \$500 and not more than \$1,000.

⁴ Section 493.6105, F.S.

private investigative intern and security officer applicants to complete the entire 40 hours of training prior to submitting their application.

Additionally, the bill updates Florida statutes to conform to federal laws and terminologies; provides flexibility in payment methods for fees; and corrects outdated references.

Food Safety

Current Florida law does not recognize tomato “repackers” in the definition of “food establishment.” The bill adds “repackers” to the definition.

During the 2007 legislative session, CS/HB 651 was enacted authorizing the Division of Food Safety (division) within the Department of Agriculture and Consumer Services (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 two years, 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.

The bill authorizes the department to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes. The bill requires the rules to be based on federal requirements, available scientific research, generally accepted industry practices, and recommendations of food safety professionals. The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. Topics that may be covered by the rules include:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes;
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to insure compliance with food safety standards. The department has the authority to impose administrative fines⁵ or issue a written notice or warning for compliance violations.

And, the bill affirms that a person documenting compliance with the department’s rules, T-GAPs and tomato best management practices (BMPs) is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill provides an exemption from food safety practices for farmers who sell their tomatoes at roadside stands and farmer’s markets, as long as the quantity sold does not exceed two 25-pound boxes per customer. The bill also gives the department rule-making authority to implement the BMP program.

The department currently has the authority⁶ to act as an adviser to producers and distributors and assist them in the economical and efficient distribution of their agricultural products through a

⁵ Administrative fines may not exceed \$5,000 per violation.

⁶ Section 570.07(10), F.S.

cooperative effort. The bill also gives the department rule-making authority to establish BMPs for agricultural production and food safety.

The bill cross-references the duties of the department with regards to food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers as it relates to the duties of the Division of Fruits and Vegetables.

Antifreeze Act of 1978

The Antifreeze Act of 1978⁷ provides guidance to the department regarding the regulation of antifreeze products in the state. Current law requires properly labeled samples of antifreeze to be furnished to the department for testing prior to the issuance of a permit. While specific sample amounts are required to perform the necessary testing, the amounts are not stipulated in statute. Therefore, some samples submitted are not adequate to perform the necessary tests, while other samples are too large thus necessitating disposal of the excess antifreeze. The bill amends current law to specify a quantity to be submitted for testing.

Gasoline and Oil Inspection

Chapter 525, F.S., governs the regulation of gasoline and oil inspection in the state. In the recent past, ethanol has begun to be blended in 70-80 percent of all gasoline sold in Florida. And by December 31, 2010, all gasoline sold in Florida will be required to contain 9-10 percent ethanol. Additionally, the presence of E85 (85 percent ethanol and 15 percent gasoline) is gaining attention in Florida for use in Flex Fuel Vehicles. Although E85 does not have a large presence at this time, it is anticipated to increase in volume in the near future.

The department is given statutory authority⁸ to collect fees to defray the cost of inspecting and analyzing specified petroleum fuels. Even though the department is required to collect and analyze ethanol before it has been blended with gasoline, ethanol is currently not subject to the petroleum inspection fee. The bill includes ethanol in the list of petroleum fuels subject to the surcharge for inspection and testing.

Sale of Brake Fluid

Businesses that sell and distribute brake fluid products in Florida must meet certain requirements in order to register or renew registration of their products. Even though the cost to the department to renew a registration for brake fluid as compared to the original registration is the same, the fee for renewal is less than the registration fee. Hence, the fee to renew the product does not cover the cost to the department of materials, labor and analysis to register the renewal. The bill changes the renewal fee from \$50 to \$100.

Currently, the department may only issue a stop-sale order on brake fluid at the location where the violation occurred. If the violation deals with product quality, brake fluid from the same "lot" may be available for sale at other locations in the state. The bill removes language that restricts the stop-sale order to only the location where the violation occurred.

Sale of Liquefied Petroleum Gas (LP Gas)

Chapter 527, F.S., regulates the sale and use of LP gas in Florida. The Bureau of LP Gas Inspections (bureau) is funded through licensure, certification, inspection and examination fees. These fees have not been increased in nearly eighteen years although the bureau's operating costs have increased during this period. Since 2006, the bureau's expenses have exceeded revenues. In January 2008, the Senate Committee on Commerce issued an interim report⁹ recommending the Legislature "...increase application and renewal fees for the LP business license...sufficient to fund the department's cost of providing services." The committee noted that the bureau was not self-sufficient and operational costs were being covered via surpluses from another bureau. The committee also noted the fee increases

⁷ Sections 501.91-501.923, F.S.

⁸ Section 525.09, F.S.

⁹ http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-207cmlong.pdf

recommended by the interim report were (and still are) supported by the LP gas industry, per industry representatives. The bill increases fees for activities related to LP gas regulation.

Currently, the statutes do not provide the department authority to issue stop-use, stop-operation, or stop-sale orders when a LP gas regulated entity fails to comply with the requirements of Chapter 527, F.S., or the rules promulgated under this section of law. While not all violations of the LP gas law meet the criteria¹⁰ for an immediate final order, the department needs the authority to issue stop-operation orders when violations occur. The bill authorizes the department to issue stop-use, stop-operation, and stop-sale orders as warranted.

Food Recovery Programs

Florida law¹¹ requires the department to develop a public information brochure detailing the need for and benefit of food recovery programs, the manner in which such organizations may become involved in food recovery programs, the protection afforded to such programs under Florida law¹², and the food recovery programs or food banks that exist in the state. Current law also requires the brochure to be updated annually.

The department states that, as the law is currently written, production of an accurate publication is not feasible for the following reasons:

- The department does not have access to information regarding food recovery entities or food banks operating in the state unless they currently contract with the department.
- Theoretically, any food bank, food pantry, soup kitchen, shelter, etc., may accept recovered food. The statutes provide no definition for these entities.
- Sub-distributing entities, such as food banks, food pantries, soup kitchens, etc., may number in the thousands.

The bill makes the public dissemination of information on food banks and food recovery programs optional for the department. The bill also transfers the responsibility to the food banks and food recovery programs to provide pertinent information to the department for dissemination to the public. The department is given rule-making authority to implement to provisions of the legislation.

Plant Industry

In 2008, the department assumed responsibility for the regulation of aquatic plants, including harvesting, distribution and sale. The current definition of nursery excludes aquatic plants harvested from the natural environment. The bill removes the exemption of aquatic plants from the definition of nursery to allow for the identification, inspection and registration of sites in the natural environment where aquatic plants are tended for harvest. The department states that monitoring of these sites will ensure that over-collection does not occur or otherwise damage the ecosystem in which the aquatic plants thrive.

Currently, the department charges \$5 annually to register a citrus source tree. This fee was established prior to the department conducting additional tests for severe strains of citrus tristeza and citrus greening. This fee is no longer adequate in covering the cost of testing and registering source trees. The bill increases the fee to \$15 annually. Additionally, the fee for registering nursery stock in the state has not been adjusted since 1992¹³; however, during the 2007-08 FY, the fees collected totaled \$555,778, which represented 57% of the total revenue needed to support the nursery inspection program. The bill increases the fee to \$600 annually.

The law currently authorizes the department, after notice and hearing, to impose an administrative fine not exceeding \$5000 per violation of plant industry laws. This fine cap has not been raised in more than 30 years and is no longer commensurate with the damage that may result to agriculture or the environment. For example, a nursery that unlawfully sells nursery stock that is under quarantine for an

¹⁰ To issue an immediate final order, the department must find an immediate serious danger to public health, safety and welfare.

¹¹ Section 570.0725, F.S.

¹² Section 768.136, F.S.

¹³ The registration fee was increased from \$400 to \$460.

exotic pest can result in a new pest species being introduced throughout the state, making eradication difficult and costly. With fines capped at \$5000 per infraction, the amount to be gained from selling a quarantined plant may far outweigh the monetary penalty. The bill increases the administrative fine cap to \$10,000 per violation.

Sale of Eggs and Poultry

State law¹⁴ provides for dressed or ready-to-cook poultry offered for sale in bulk in the state to be held in a container clearly labeled with the grade and the part name or whole-bird statement of such poultry. The grade may be expressed as “premium,” “good,” or “standard.” The grade may also be expressed in terms of equal standard as used in other states or by a federal agency. The United States Department of Agriculture (USDA) recently advised the department that current statutory language¹⁵ violates the Poultry Products Inspection Act because it preempts federal law. The bill deletes language regarding the grading of poultry that has not been used in 10 years.

Forest Protection

Currently, the Division of Forestry (division) does not have the statutory authority to delegate issuance of open burning authorizations to local governments, although many local governments have expressed an interest, and ability, to implement a burn authorization program with division guidance. Some counties issue permits under their own authority, but the division is required to come behind and re-issue daily authorization due to the lack of delegation authority. The bill authorizes the delegation of authority to issue authorizations for open burning by the division to local governments. The local government’s program must be approved by the division, provide ordinance or local law that complies with state law, provide enforcement of the program’s requirements and provide financial, personnel and other resources needed to carry out the program. If the division determines that a local government’s program does not comply with state law or corresponding rules, the division can require the local government to take corrective action within a reasonable timeframe. If the local government fails to comply within the allotted time, the division shall resume administration of the open burning authorization program from the local government. Local governments administering an open burning authorization program are responsible for cooperating and assisting the division in carrying out the division’s powers, duties and functions. Violations of a local government’s open burning authorization program are subject to penalties as provided in s. 590.14, F.S.

In November, 2006, the division implemented a Certified Pile Burner program (program). The bill codifies this program in statute. It provides definitions for “certified pile burner,” “pile burning,” “land-clearing operation” and “yard trash,” as well as revises the definition of “extinguished.” The bill requires the certified pile burner to ensure:

- Prior to ignition, that the piles are properly placed and the content is conducive to efficient burning;
- The piles are properly extinguished no later than 1 hour after sunset. In certain areas, the piles must be properly extinguished at least 1 hour before sunset.
- The specific consent of the landowner or his agent must be obtained before requesting authorization to burn;
- An authorization to burn has been obtained from the division prior to ignition;
- There are adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

If a burn is conducted in accordance with the provisions of the program, the property owner and his/her agent are not liable under applicable Florida law¹⁶ for damage or injury caused by the fire or resulting smoke unless gross negligence is proven. Violations of program provisions are a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days or a \$500 fine. The division is given rule-making authority to implement the certified pile burning program.

¹⁴ Section 583.13(1), F.S.

¹⁵ Id.

¹⁶ Section 590.13, F.S.

The bill also delegates to the county tax collector the responsibility for sending notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

And lastly, the bill recognizes the violation of division rules as a criminal act. When the division sets burn restrictions by rule, nothing in the statutes allows enforcement of these rules. Therefore, there is no retribution for someone who chooses not to comply.

Florida Farm Winery Program

Currently, the Florida Farm Winery program is limited to those wineries that produce wine from grapes. Several Florida wine producers use fruits, other than grapes, and vegetables to make wine. However, these producers are not eligible to be registered and certified by the department as Florida Farm Wineries. The bill amends the Florida Farm Winery Program to recognize wine produced from products other than grapes.

Dealers in Agricultural Products

The Florida License and Bond Law (law)¹⁷ 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 the industry has 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.

The bill also amends current law to clarify that no person who has held a responsible position with a person, partnership, corporation or other business entity against whom the department has entered an administrative complaint, final order or whose license has been suspended or revoked for failure to comply with an order of the department may hold a responsible position with an agricultural dealer, licensed or otherwise, until the pending order has been satisfied. This is intended to close a loophole for individuals who register a corporation for the purchasing of agricultural products and then shut it down to avoid licensure or enforcement only to register a new corporation and continue operating without a license.

The bill revises the minimum amount of surety bonds or certificates of deposit required for agricultural products dealer licenses. The bill clarifies that if a dealer in agricultural products fails, refuses or neglects to apply and qualify for a license renewal on or before its expiration date, a penalty¹⁸ shall apply and be added to the license fee for the principal place of business and to the license fee for each additional place of business named in the application.

Safety Standards for Amusement Rides

Section 616.242, F.S., provides regulatory authority to the department for the safe operation of amusement rides in the state. Currently, the department does not have authority to issue a stop-

¹⁷ Sections 604.15-604.34, F.S.

¹⁸ Not to exceed \$100.

operation order to an owner of an amusement ride that does not comply with the requirements of Chapter 616, F.S., or department rules. There are many potential violations of amusement ride laws that do not meet the criteria¹⁹ for issuance of an immediate final order. The bill grants the department the authority to issue a stop-operation order in instances where a violation occurs that does not rise to the level of an immediate serious danger.

Miscellaneous Issues

During the 2008 regular session, the Legislature removed all funding for the Florida Agricultural Museum due to a decrease in use and significant increases in the cost of operation. Section 570.901, F.S., referencing the Florida Agricultural Museum is being repealed from statute, as well as other cross-references to the museum.

The bill provides for audits on marketing orders to be performed at the request of the advisory council associated with the marketing order. Previously, an annual audit by a certified public accountant was required.

The bill also removes references to the Florida State Collection of Arthropods contract with the department as a direct service organization, which ended several years ago.

The bill corrects various cross-references occurring in statutes regulated by the department.

B. SECTION DIRECTORY:

Section 1: Amends s. 482.021, F.S.; amends definitions of “certified operator in charge” and “employee.”

Section 2: Amends s. 482.051, F.S.; requires a termite inspection prior to issuing a contract.

Section 3: Amends s. 482.071, F.S.; increases financial responsibility requirements on certificates of insurance for licensees.

Section 4: Creates s. 482.072, F.S.; authorizes the department to license pest control service centers; requires biennial renewal of license; establishes a license/renewal fee for pest control service centers; establishes a grace period for renewal of license; establishes a late renewal charge; provides for expiration of license at time certain; provides for relicensure; provides for license expiration upon address change; establishes fee for relicensure; provides criteria for issuing pest control service center license; provides criteria for denying and refusing to renew license; clarifies need for employee identification card; authorizes rule-making authority; and, provides criteria for discipline of pest control service center licensee and/or pest control business licensee for misactions of employees.

Section 5: Amends s. 482.152, F.S.; revises the duties of a certified operator in charge.

Section 6: Creates s. 482.157, F.S.; establishes certification for individual commercial wildlife management personnel; prescribes methods of removal of nuisance wildlife; requires examination and fee for certification; requires proof of insurance by employer of person applying for certification; provides for biennial recertification with fee; provides for grace period for recertification; provides for late fee; and, provides criteria on certification.

Section 7: Amends s. 482.163, F.S., revises persons responsible for an employee’s actions; extends disciplinary actions to include licensee in certain circumstances and requires department to notify licensee and certified operator in charge when administrative action is taken against an employee.

Section 8: Amends s. 482.226, F.S.; increases limits for financial responsibility insurance coverage for persons with wood-destroying organism inspection licenses.

¹⁹ To issue an immediate final order, the department must find an immediate serious danger to public health, safety and welfare.

Section 9: Amends s. 493.6102, F.S.; provides that certain provisions relating to security officers do not apply to certain officers performing off-duty activities.

Section 10: Amends s. 493.6105, F.S.; revises information to be included on an application for private investigators, private security officers and recovery agents.

Section 11: Amends s. 493.6106, F.S.; revises citizenship requirements and documentation for private investigators, private security officers and recovery agents; and, requires applicant to not be prohibited from purchasing or possessing a firearm.

Section 12: Amends s. 493.6107, F.S.; revises methods by which fees may be paid.

Section 13: Amends s. 493.6108, F.S.; revises requirements for criminal history checks of license applicants whose fingerprints are not legible; and, requires investigation of the mental and emotional fitness of applicants for firearms instructor licenses.

Section 14: Amends s. 493.6111, F.S.; requires security officer school or recovery agent school to obtain department approval for use of a fictitious name.

Section 15: Amends s. 493.6113, F.S.; revises application renewal procedures and requirements.

Section 16: Amends s. 493.6115, F.S.; conforms cross-references.

Section 17: Amends s. 493.6118, F.S.; revises grounds for disciplinary action.

Section 18: Amends s. 493.6121, F.S.; deletes provisions for department access to certain criminal history records provided to licensed gun dealers.

Section 19: Amends s. 493.6202, F.S.; revises methods by which fees may be paid.

Section 20: Amends s. 493.6203, F.S.; clarifies that bodyguard services do not count toward certain license requirements; and, revises training requirements for private investigator intern license applicants.

Section 21: Amends s. 493.6302, F.S.; revises methods by which fees may be paid.

Section 22: Amends s. 493.6303, F.S.; revises training requirements for security officer license applicants.

Section 23: Amends s. 493.6304, F.S.; revises application requirements and procedures for security school licenses.

Sections 24-26: Amends ss. 493.6401, 493.6402, and 493.6406, F.S.; revises out-dated terminology.

Section 27: Amends s. 500.03, F.S.; amends the definition of "food establishment" to include tomato repackers.

Section 28: Creates s. 500.70, F.S.; provides definitions; allows rule-making authority; sets parameters for rules; authorizes the Department of Agriculture and Consumer Services (department) to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations or vehicles being used to transport or hold tomatoes; authorizes the imposition of administrative fines and/or written notices for violations; provides a presumption of compliance under certain circumstances and, provides an exemption.

Sections 29-30: Amends ss. 501.605 and 501.607, F.S.; revises information to be included on license for commercial telephone seller.

Section 31: Amends s. 501.913, F.S.; revises size of antifreeze sample to be submitted with application.

Section 32: Amends s. 525.01, F.S.; revises requirements for petroleum fuel affidavits.

Section 33: Amends s. 525.09, F.S.; imposes an inspection fee on certain alternative fuels containing alcohol.

Section 34: Amends s. 526.50, F.S.; provides definitions for “brand” and “formula.”

Section 35: Amends s. 526.51, F.S.; revises brake fluid permit application requirements; deletes permit renewal requirements; provides for reregistration of brake fluid; and establishes fees.

Section 36: Amends s. 526.52, F.S.; revises information to be included on brake fluid labels.

Section 37: Amends s. 526.53, F.S.; revises criteria for issuing a stop-sale order.

Section 38: Amends s. 527.02, F.S.; increases fees for liquefied petroleum gas licenses.

Section 39: Amends s. 527.0201, F.S.; revises requirements for liquefied petroleum gas qualifying examinations.

Section 40: Amends s. 527.021, F.S.; revises fees for inspecting transport vehicles; and, requires registered transport vehicles to be inspected annually.

Section 41: Amends s. 527.12, F.S.; authorizes the department to issue a stop-use order, stop-operation order or stop-sale order for violations relating to the liquefied petroleum gas.

Sections 42-43: Amends ss. 559.805 and 559.928, F.S.; deletes requirements that lists of independent agents of sellers of business opportunities and the agents’ registration affidavits include the agents’ social security numbers.

Section 44: Amends s. 570.07, F.S.; revises the duties of the department

Section 45: Amends s. 570.0725, F.S.; revises provisions for public information regarding food banks and food recovery programs; and grants rule-making authority to the department.

Section 46: Amends s. 570.48, F.S.; revises duties of the Division of Fruit and Vegetables.

Sections 47-48: Amends ss. 570.53 and 570.54, F.S.; conforms cross-references.

Section 49: Amends s. 570.55, F.S.; revises requirements for identifying sellers or handlers of tropical fruit or vegetables.

Section 50: Amends s. 570.902, F.S.; revises definitions.

Section 51: Amends s. 570.903, F.S.; revises provisions for direct-support organizations for certain agricultural programs to conform to the repeal by the act of provisions establishing the Florida Agricultural Museum; and, deletes provisions for a direct-support organization for the Florida State Collection of Arthropods.

Section 52: Amends s. 573.118, F.S.; provides for an audit of marketing orders when requested by advisory council; requires audit to be completed within specified timeframe; and, requires copy of audit be provided to advisory council within specified timeframe.

Section 53: Amends s. 581.011, F.S.; revises definitions.

Section 54: Amends s. 581.031, F.S.; increases citrus source tree registration fees.

Section 55: Amends s. 581.131, F.S.; increases certificate of registration fees.

Section 56: Amends s. 581.211, F.S.; increases penalty for violations of plant industry regulations.

Section 57: Amends s. 583.13, F.S.; deletes a prohibition on the sale of poultry without displaying the poultry grade.

Section 58: Amends s. 590.125, F.S.; revises definitions for pile burning authorizations; specifies purposes of certified prescribed burning; requires the authorization of the Division of Forestry for certified pile burning; provides pile burning requirements; limits the liability of property owners or agents engaged in pile burning; provides for the certification of pile burners; provides penalties for violations by certified pile burners; requires rules; revises notice requirements for wildfire hazard reduction treatments; provides for approval of local government open burning authorization programs; provides program requirements; authorizes the division to close local government programs under certain circumstances; and, provides penalties for violations of local government open burning requirements.

Section 59: Amends s. 590.14, F.S.; authorizes fines for violations of any division rules; provides penalties for certain violations; and, provides legislative intent.

Section 60: Amends s. 599.004, F.S.; revises standards that a winery must meet to qualify as a certified Florida Farm Winery.

Section 61: Amends s. 604.15, F.S.; revises the term "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products; and, defines the term "responsible position."

Section 62: Amends s. 604.19, F.S.; revises requirements for late fees on agricultural products dealer applications.

Section 63: Amends s. 604.20, F.S.; revises the minimum amount of the surety bond or certificate of deposit required for agricultural products dealer licenses; provides conditions for the payment of bond or certificate of deposit proceeds; and, requires additional documentation for issuance of a conditional license.

Section 64: Amends s. 604.25, F.S.; prohibits certain persons from holding a responsible position with an agricultural products dealer; and, authorizes the suspension or revocation of an agricultural products dealer license for employing such a person.

Section 65: Amends s. 616.242, F.S.; authorizes the issuance of stop-operation orders for amusement rides under certain circumstances.

Section 66: Amends s. 790.06, F.S.; authorizes a concealed firearm license applicant to submit fingerprints administered by the Division of Licensing.

Section 67: Repeals s. 570.071 and 570.901, F.S.; relates to the Florida Agricultural Exposition and the Florida Agricultural Museum.

Section 68: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

(FY 09-10)	(FY 10-11)	(FY 11-12)
Amt/FTE	Amt/FTE	Amt/FTE

1. Revenues:

Recurring:			
Standards (GITF*)			
Section 33 – Petroleum Inspection	\$ 787,000	\$ 787,000	\$ 787,000
Section 38 – LP Gas Inspections	262,000	262,000	262,000
Marketing (GITF)			
Section 60 – Tropical Foliage	(23,730)	(24,441)	(25,175)
Ag Environmental Services (GITF)			
Section 4 – Centralized Service Center License			
\$500 per license x 10 companies	5,000		
\$500 per renewal x 10 companies			5,000
Section 6 - Limited Cert. Wildlife Mgmt. License			
\$150 Limited Cert. Exam x 100	15,000	7,500	7,500
\$75 for renewal x 100 2 nd year; 150 3 rd year			15,000
Fruits & Vegetables – (GITF)			
Section 46 - \$100 registration x 100 farms	10,000	10,000	10,000
Plant Industry – (PITF**)			
Section 53 - \$10 Citrus Source Tree Reg.			
(\$10 x 5,321 citrus source trees)	53,210	54,806	56,450
Section 54 – Cert. of Nursery Registration	<u>190,852</u>	<u>196,578</u>	<u>202,475</u>
Total Revenues	\$ <u>1,299,332</u>	\$ <u>1,293,443</u>	\$ <u>1,320,250</u>

2. Expenditures:

Recurring:			
Ag Environmental Services -			
Cost for Exams/Supplies	\$ 15,147	\$ 14,729	\$ 15,500
Fruits & Vegetables -			
Cost for Inspection of Repackers	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
Total Recurring	25,147	24,729	25,500
Non-Recurring:			
Forestry:			
Printing (new Open Burn rules & Regulation books)	<u>5,000</u>		
Total Non-Recurring	<u>5,000</u>		
Total Expenditures	\$ <u>30,147</u>	\$ <u>24,729</u>	\$ <u>25,500</u>

*General Inspection Trust Fund

**Plant Industry Trust Fund

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown

2. Expenditures:

Unknown

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Division of Agricultural Environmental Services

Pest control businesses that choose to obtain the centralized service center or the limited certification for commercial wildlife management personnel licenses will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

Division of Licensing

Applicants for classes "CC" and "D" licenses (private investigator intern and security officer, respectively) will incur costs related to training requirements prior to license application.

Division of Standards

Petroleum suppliers and wholesalers, as well as liquefied petroleum gas and equipment sellers and dealers, will incur costs related to the increased fees.

Division of Marketing

The bill requires food banks and food recovery programs to provide pertinent information to the department for inclusion in the public information brochure distributed to the public; therefore, keeping the public better informed of services provided by food banks and food recovery programs.

The expansion of the Certified Florida Farm Winery program may benefit farmers who produce wine from products other than grapes.

The exemption for tropical foliage from the definition of agricultural products provides a cost savings to tropical foliage producers. Also, changes to the bonding requirements provide a cost savings to many agricultural dealers.

Division of Fruit and Vegetables

The cost of the private sector will be \$100 registration fee per farm to cover the costs of tomato best management practices manual and audit program for tomato packinghouses and farms.

Division of Forestry

The bill reduces the risk of certified pile burners to have litigation brought against them.

Division of Plant Industry

Nurseries will incur a five cent increase per tree produced. More than likely, this will be passed on to commercial citrus growers upon the sale of a citrus tree.

The larger nursery operations will see an increase of \$140 annually. Small nurseries will see a proportionately smaller increase in the registration fee.

D. FISCAL COMMENTS:

The department reports that the petroleum industry supports the inclusion of ethanol products in the definition of petroleum fuels as well as the resulting inspection fees. Additionally, according to the department, the liquefied petroleum gas industry is supportive of the increase in license and registration fees included in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority to:

- Establish requirements and procedures for recordkeeping and monitoring of pest control service center operations;
- Establish food safety standards to protect public safety from tainted tomatoes;
- Establish tomato good agricultural practices and tomato best management practices;
- Administer the food safety act as it relates to tomatoes;
- Establish best management practices for agricultural production and food safety;
- Administer the public dissemination of information regarding food banks and food recovery services; and,
- Regulate certified pile burning.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 24, 2009, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment and (5) amendments to the strike-all amendment. The (5) amendments to the strike-all amendment changed the renewal for pest control service center licenses and certificates for commercial wildlife management personnel to be renewed biennially, rather than biannually. The amendments also change the fee structure for the biennial registration to double the current annual registration amount.

In regards to the licensing of private investigators, security officers and/or recovery agents, the strike-all amendment:

- Removes a reference regarding the notarization of applications.
- Clarifies that applicants for Class "G" or "K" licenses (those able to carry a handgun while on duty) must not be prohibited from purchasing or possessing a firearm by the state or federal law.
- Clarifies persons licensed after August 31, 2008 are not required to complete additional hours of training beyond what was required at the time he/she was licensed.

In regards to tomato food safety practices, the strike-all amendment:

- Makes a technical correction (inserts an "s" that was omitted from the original draft).
- Clarifies that the violations apply to the "section" of law rather than the entire "chapter".

In regards to the distribution of information regarding food banks and food recovery programs, the strike-all amendment authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to implement the provisions of the amendment.

In regards to the department delegating authority to local governments to issue open burn authorizations, the strike-all amendment removes language "allowing a local government to override the department's exclusive power to issue burn permits for agriculture and silviculture under certain circumstances."

In regards to pest control, the strike-all amendment provides for the biannual renewal for a pest control service center license and commercial wildlife management personnel certification rather than annual renewal.

The strike-all amendment also contains several other style and technical changes to conform the House bill to the Senate version.

On March 27, 2009, the General Government Policy Council adopted (2) amendments to CS/HB 1447 and reported the bill favorably from council. **Amendment 1** provides an exemption from certain food safety practices for agricultural producers who sell their tomatoes, in limited quantities, at roadside stands or farmer's markets.

Amendment 2 provides for audits of marketing orders to be performed upon the request of the advisory council associated with the marketing order. Previously, annual audits by a certified public accountant were required.