

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 7091	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	State Affairs Committee; Agriculture & Natural Resources Subcommittee; Pigman; and others	112 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/SB 1630; HB 121; HB 207; CS/HB 575; HB 5003; CS/SB 312	<b>GOVERNOR'S ACTION:</b>	Approved

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### SUMMARY ANALYSIS

CS/HB 7091 passed the House on April 23, 2014, and subsequently passed the Senate on May 2, 2014. The bill addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (department). The bill primarily reorganizes the department's general authorizing statute, chapter 570, F.S., into five separate "parts," creating a new part V that consolidates all of the provisions establishing fines enforced by the department that are currently spread throughout several different chapters. The bill does not increase, and in some cases decreases, fines currently in law. Among other things, the bill:

- Expands the authority of the Florida Forest Service, under certain conditions, to grant leases, permits, privileges, and concessions for the use of state forest lands to include any lands leased by or assigned to the Florida Forest Service for management purposes.
- Allows landowners who miss the March 1 application deadline for obtaining an agricultural classification on their lands for property tax purposes to provide the property appraiser evidence that the applicant was unable to apply in a timely manner or otherwise demonstrate extenuating circumstances. If the property appraiser finds the evidence sufficient, the classification may be granted.
- Allows agricultural lands participating in a dispersed water storage program to retain an agricultural classification and requires those lands to be assessed as nonproductive agricultural lands. If the land is diverted to a non-agricultural use, it must be assessed as any other non-agricultural land.
- Authorizes the department to close a food facility if the department finds it poses an immediate danger or threat to public health, safety, and welfare.
- Authorizes the department to issue a stop-use, removal, or hold order if the department has probable cause to believe that a food processing area or food storage area is in violation of current laws so as to be dangerous or unsanitary.
- Removes the requirement that a fertilizer company post a surety bond to ensure payment of certain required fees. The department has authority elsewhere to enforce and collect these fees.
- Repeals a pilot program related to use of Australian pine trees and authorizes use of the trees statewide as a windbreak for citrus groves with a valid permit.
- Brings Florida into compliance with the Interstate Shellfish Sanitation Conference regarding mandatory training requirements for the Shellfish Model Ordinance.
- Specifies that businesses must have a food permit and pay fees prior to opening for business, and that food permits are not transferable to a different location or owner.

The bill appears to have an insignificant fiscal impact on state government and may have an indeterminate, negative jail bed impact on local government. The bill appears to have a positive impact on the private sector. (See Fiscal Analysis and Economic Impact section).

The bill was approved by the Governor on June 13, 2014, ch. 2014-150, L.O.F., and becomes effective on July 1, 2014.

### I. SUBSTANTIVE INFORMATION

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

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DATE: June 24, 2014

A. EFFECT OF CHANGES:

**Reorganization of Chapter 570, F.S.**

*Present Situation*

Chapter 570, F.S., is the primary authorizing chapter for the Department of Agriculture and Consumer Services (department). This chapter establishes the department, as well as the Commissioner of Agriculture (commissioner); establishes the functions, powers, and duties of the department; creates the various divisions and offices within the department; and establishes the functions and duties of those divisions and offices.

Over the years, chapter 570, F.S., also has become a general “catch-all” for statutory language that does not fall within another statutory chapter’s specific subject area under the department’s jurisdiction.

*Effect of Proposed Changes*

The bill reorganizes chapter 570, F.S., by separating the chapter into five parts, reorganizing the existing sections into a more logical sequence and, in some cases, transferring language from chapter 570, F.S., to other chapters that are better suited for the existing language.

Part I is entitled General Provisions and contains ss. 570.01-570.232, F.S.; part II is entitled Program Services and contains ss. 570.30-570.693, F.S.; part III is entitled Agricultural Development and contains ss. 570.70-570.89, F.S.; part IV is entitled Agricultural Water Policy and contains ss. 570.916-570.94, F.S.; and part V is entitled Penalties and contains s. 570.971, F.S.

The following sections of chapter 570, F.S., are simply being renumbered and do not include any substantive changes:

- Section 570.0705, F.S., relating to advisory committees, is renumbered as s. 570.232, F.S.
- Section 570.0725, F.S., relating to food recovery, is renumbered as s. 595.420, F.S.
- Section 570.073, F.S., relating to the department’s law enforcement officers, is renumbered as s. 570.065, F.S.
- Section 570.0741, F.S., relating to the energy efficiency and conservation clearinghouse, is renumbered as s. 377.805, F.S.
- Section 570.075, F.S., relating to water supply agreements, is renumbered as s. 570.916, F.S.
- Section 570.076, F.S., relating to the Environmental Stewardship Certification Program, is renumbered as s. 570.921, F.S.
- Section 570.085, F.S., relating to agricultural water conservation and supply planning, is renumbered as s. 570.93, F.S.
- Section 570.087, F.S., relating to best management practices for wildlife, is renumbered as s. 570.94, F.S.
- Section 570.16, F.S., relating to the interference with department employees in the performance of duties, is renumbered as s. 570.051, F.S.
- Section 570.17, F.S., relating to the division of work between the department and experiment station and extension service, is renumbered as s. 570.081, F.S.
- Section 570.18, F.S., relating to organization of departmental work, is renumbered as s. 570.041, F.S.
- Section 570.241, F.S., relating to a short title, is renumbered as s. 570.73, F.S.
- Section 570.242, F.S., relating to definitions of the Agricultural Economic Development Act, is renumbered as s. 570.74, F.S.
- Section 570.243, F.S., relating to legislative intent of the Agricultural Economic Development Act, is renumbered as s. 570.75, F.S.

- Section 570.244, F.S., relating to powers and duties of the department, is renumbered as s. 570.76, F.S.
- Section 570.245, F.S., relating to interaction of other economic development agencies and groups, is renumbered as s. 570.77, F.S.
- Section 570.246, F.S., relating to agricultural economic development funding, is renumbered as s. 570.78, F.S.
- Section 570.247, F.S., relating to promulgation of rules, is renumbered as s. 570.79, F.S.
- Section 570.248, F.S., relating to powers and duties of the Agricultural Economic Development Project Review Committee, is renumbered as s. 570.81, F.S.
- Section 570.249, F.S., relating to Agricultural Economic Development Program disaster and loans, is renumbered as s. 570.82, F.S.
- Section 570.38, F.S., relating to the Animal Industry Technical Council, is renumbered as s. 585.008, F.S.
- Section 570.42, F.S., relating to the Dairy Industry Technical Council, is renumbered as s. 502.301, F.S.
- Section 570.481, F.S., relating to fruit and vegetable inspection fees, is renumbered as s. 603.011, F.S.
- Section 570.531, F.S., relating to Market Improvement Working Capital Trust Fund, is renumbered as s. 570.209, F.S.
- Section 570.545, F.S., relating to unsolicited goods, is renumbered as s. 501.0113, F.S.
- Section 570.55, F.S., relating to identification of sellers or handlers of tropical or subtropical fruit and vegetables, is renumbered as s. 603.211, F.S.
- Section 570.901, F.S., relating to the Florida Agricultural Museum, is renumbered as s. 570.692, F.S.
- Section 570.902, F.S., relating to definitions, is renumbered as s. 570.69, F.S.
- Section 570.903, F.S., relating to direct support organizations, is renumbered as s. 570.691, F.S.
- Section 570.91, F.S., relating to Florida agriculture in the classroom, is renumbered as s. 570.693, F.S.
- Section 570.9135, F.S., relating to the Beef Market Development Act, is renumbered as s. 570.83, F.S.
- Section 570.951, F.S., relating to legislative findings for the Florida Agriculture Center and Horse Park, is renumbered as s. 570.681, F.S.
- Section 570.952, F.S., relating to the Florida Agriculture Center and Horse Park Authority, is renumbered as s. 570.685, F.S.
- Section 570.953, F.S., relating to confidentiality of the Florida Agriculture Center and Horse Park Authority donors, is renumbered as s. 570.686, F.S.
- Section 570.954, F.S., relating to the farm-to-fuel initiative, is renumbered as s. 570.841, F.S.
- Section 570.96, F.S., relating to agritourism, is renumbered as s. 570.85, F.S.
- Section 570.961, F.S., relating to definitions, is renumbered as s. 570.86, F.S.
- Section 570.962, F.S., relating to agritourism participation impact on land classification, is renumbered as s. 570.87, F.S.
- Section 570.963, F.S., relating to liability, is renumbered as s. 570.88, F.S.
- Section 570.964, F.S., relating to posting and notification, is renumbered as s. 570.89, F.S.

The bill also makes technical, non-substantive, conforming revisions to ss. 193.461, 288.1175, 320.08058, 373.621, 373.709, 381.0072, 482.243, 509.032, 570.07, 377.805, 570.921, 570.23, 570.242, 570.74, 570.79, 570.36, 585.008, 502.301, 570.44, 570.45, 570.451, 570.51, 570.543, 570.69, 570.83, 570.685, 570.86, 570.88, 570.89, 571.28, 581.186, 582.06, 586.161, 595.701, and 599.002, F.S.

## Penalty Provision

### *Present Situation*

Currently, each provision containing a penalty enforced by the department is located within the specific statutory section containing the regulation being enforced. For example, fines dealing with noncompliance related to certification for nurserymen, stock dealers, and plant brokers are located in s. 581.141, F.S., which establishes the certificate of registration requirements.

In an effort to be more consistent, as well as consumer friendly, the department has recommended consolidating its fines and penalties into one part of the statute and placing cross-references within the specific subject matter statutes to identify what the penalties are for noncompliance.

### *Effect of Proposed Changes*

The bill creates section 570.971, F.S., in the new part V of chapter 570, F.S., to establish a central fine authority and fine structure for the department. The bill authorizes the department or enforcing authority to impose the following fine amounts for the class category specified in the chapter or section of law violated:

- Class I. For each violation in the Class I category, a fine not to exceed \$1,000 may be imposed.
- Class II. For each violation in the Class II category, a fine not to exceed \$5,000 may be imposed.
- Class III. For each violation in the Class III category, a fine not to exceed \$10,000 may be imposed.
- Class IV. For each violation in the Class IV category, a fine of \$10,000 or more may be imposed.

The bill does not increase, and in some cases decreases, fines currently in law. The bill simply provides a cross reference in each chapter or section to the fine schedule in s. 570.971, F.S.

The bill specifies that these penalties are in addition to any other remedy provided by law. The bill also specifies that if the chapter, section of law, or rule violated provides for a cap on the total fine that can be imposed, the amended fine structure does not supersede that cap. These class categories must also apply to any penalties provided by rule. In addition, a person who violates the provisions of chapter 570, F.S., or any rules adopted thereunder, is subject to an administrative or civil fine in the Class II category in addition to any other penalty provided by law.

The bill authorizes the department to refuse to issue or renew any license, permit, authorization, certificate, or registration to a person who has not satisfied a penalty imposed by the department. The bill also authorizes the department to adopt rules to implement the revised penalty structure provisions and any sections that reference the provisions.

The sections affected by the new fine schedule include:

- Section 253.74, F.S.
- Sections 472.0351 and 472.036, F.S.
- Sections 482.161 and 482.165, F.S.
- Sections 487.091 and 487.175, F.S.
- Sections 493.6118 and 493.6120, F.S.
- Section 496.420, F.S.
- Sections 500.121, 500.165, and 500.70, F.S.
- Sections 501.019, 501.059, 501.612, 501.619, and 501.922, F.S.
- Section 502.231, F.S.

- Sections 507.09 and 507.10, F.S.
- Section 525.16, F.S.
- Sections 526.311 and 526.55, F.S.
- Section 527.13, F.S.
- Section 531.50, F.S.
- Section 534.52, F.S.
- Section 539.001, F.S.
- Sections 559.921, 559.9355, and 559.936, F.S.
- Sections 571.11 and 571.29, F.S.
- Section 576.061, F.S.
- Section 578.181, F.S.
- Section 580.121, F.S.
- Sections 581.141 and 581.211, F.S.
- Section 585.007, F.S.
- Section 586.15, F.S.
- Section 590.14, F.S.
- Sections 597.0041 and 597.020, F.S.
- Section 601.67, F.S.
- Section 604.22 and 604.30, F.S., and
- Section 616.242, F.S.

While most of the fines and penalties will remain the same, a few will decrease as indicated in the following chart:

<b>Penalty Provision Changes</b>			
Chapter	Section	Current Fine Amount Maximum per Violation	Proposed Fine Amount Maximum per Violation
Food Safety	s. 500.121(2)	\$10,000	\$5,000
Food Safety	s. 500.165(3)	\$50,000	\$10,000
Antifreeze	s. 501.922(1)(a)	\$1,000 for first offense; \$5,000 for repeat offenses	\$5,000 for any offense
Milk	s. 502.231(1)(b)1.	\$10,000	\$5,000
Gasoline	s. 525.16(1)(a)2.	\$1,000 for first offense; willful intent up to \$5,000 for repeat offenses	\$5,000
Weights and Measures	s. 531.50(1)(b)	\$1,000 for first offense; \$2,500 for second; \$5,000 for third	\$5,000 for any offense
Sellers of Travel	s. 559.9355(1)(c)	\$10,000	\$0

## **Agricultural Water Policy**

### *Present Situation*

Section 570.074, F.S., specifies that the commissioner may create an Office of Agricultural Water Policy under the supervision of a senior manager. The commissioner may designate the bureaus and positions in the various organizational divisions of the department that report to this office relating to water policy affecting agriculture, application of such policies, and coordination of such matters with state and federal agencies.

### *Effect of Proposed Changes*

The bill renumbers s. 570.074, F.S., as s. 570.66, F.S. The bill also requires the Office of Agricultural Water Policy to enforce and implement the provisions of chapter 582, F.S.<sup>1</sup> This duty is currently performed by the Division of Agricultural Environmental Services.

### **Seal of the Department**

#### *Present Situation*

Section 570.14, F.S., directs the department to have an official seal, which must be used for the authentication of the orders and proceedings of the department and for other purposes as the department may prescribe.

#### *Effect of Proposed Changes*

The bill renumbers s. 570.14, F.S., as s. 570.031, F.S., and states that the use of the seal or any likeness requires written approval of the department.

### **Division of Food Safety**

#### *Present Situation*

Section 570.50(2), F.S., authorizes the department to conduct general inspection activities relating to food and food products being processed, held, or offered for sale in the state and enforcing the provisions of chapters 500, 501, 502, 531, 583, 585, 586, and 601, F.S. These chapters include food products, consumer protection, milk, milk products, frozen desserts, weights, measures, standards, eggs, poultry, animal industry, honey, honeybees, and citrus.

Section 570.50(3), F.S., authorizes the department to analyze samples of food offered for sale in the state as required under chapters 500, 501, 502, 585, 586, and 601, which include food products, consumer services, milk, milk products, frozen desserts, animal industry, honey, honey bees, and citrus.

#### *Effect of Proposed*

The bill amends ss. 570.50(2) and (3), F.S., to include chapter 597, F.S., authorizing the division to inspect aquaculture facilities and analyze food samples from these facilities.

### **Office of Energy**

#### *Present Situation*

During the 2011 Session, the Office of Energy (Energy Office) was transferred from the Governor's Office to the department. However, the Energy Office was never specifically established in the department's authorizing statute, chapter 570, F.S.

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<sup>1</sup> Chapter 582, F.S., establishes soil and water conservation districts, which are governmental subdivisions of the state that coordinate with federal, state, regional, and other local partners to develop and implement soil and water conservation practices on private lands.

### *Effect of Proposed Changes*

The bill creates s. 570.67, F.S., establishing the Energy Office within the department, and requires the Energy Office to be under the supervision of a senior manager appointed by the commissioner. The duties of the Energy Office include administering and enforcing the provisions of Parts II and III of ch. 377, F.S., which deal with energy resources planning and development and renewable energy and green government programs.

### **Pest Control Compact**

#### *Present Situation*

In 2009, the Legislature established the Pest Control Compact (compact) in statute. Section 570.345, F.S., establishes the compact between Florida and other member states<sup>2</sup> for the purpose of curtailing depredation by pests throughout the various member states. The compact also establishes the Pest Control Insurance Fund to finance certain pest control operations performed by the states pursuant to the compact.

#### *Effect of Proposed Changes*

The bill repeals s. 570.345, F.S., which establishes the compact. According to the department, the compact was dissolved in 2012 at the request of the National Plant Board. Therefore, it is no longer necessary to retain this language in statute.

### **Florida Consumer Services Act**

#### *Present Situation*

Section 570.542, F.S., specifies that the title of the section is the “Florida Consumer Services Act.” There are no other statutory provisions contained in this section due to various revisions and reorganizations of the statute.

#### *Effect of Proposed Changes*

The bill repeals s. 570.542, F.S. Because there are no provisions contained in this section except for the short title, there is no longer a need for the section.

### **Conservation Easements and Agreements**

#### *Present Situation*

Section 570.71(12), F.S., authorizes the department to use funds from the following sources to implement certain conservation easements and agreements:

- State funds;
- Federal funds;
- Other governmental entities;
- Nongovernmental organizations; and
- Private individuals.

#### *Effect of Proposed Changes*

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<sup>2</sup> See list of member states at <http://pestcompact.org/membership.htm#Current Members>.

The bill amends s. 570.71(12), F.S., to specify that the funds described above can be used for administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses.

## **Definition of Department**

### *Present Situation*

Section 570.72, F.S., provides that as used in ss. 570.70 and 570.71, F.S., the term “department” refers to the Department of Agriculture and Consumer Services.

### *Effect of Proposed Changes*

The bill repeals s. 570.72, F.S. This section is duplicative and not necessary.

## **Equestrian Educational Sports Program**

### *Present Situation*

Section 570.92, F.S., directs the department to establish an equestrian educational sports program with one or more accredited four-year state universities that is designed to give student riders the opportunity to learn, compete, and succeed at the collegiate level while at the same time promoting the state’s multibillion dollar equine industry.

### *Effect of Proposed Changes*

The bill repeals s. 570.92, F.S. According to the department, this program was never fully implemented. Therefore, the statute is unnecessary.

## **Pesticide Regulation**

### *Present Situation*

Section 487.041(3)(d), F.S., authorizes the department to require a pesticide registrant who discontinues the distribution of a brand of pesticide in the state to continue the registration of the brand for a minimum of two years or until no more pesticide remains on retailers’ shelves.

Section 487.046(1), F.S., specifies that an application for a certified applicator license must be made in writing to the department on a form furnished by the department. Each application must contain information regarding the applicant’s qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

Section 487.047(3), F.S., provides that any person who holds a valid applicator’s license or who holds a valid purchase authorization card issued by the department or by a licensee can purchase restricted-use pesticides. A nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. Application for the license must be made on a form prescribed by the department.

Section 487.048(1), F.S., provides that each person holding or offering for sale, selling, or distributing restricted-use pesticides must obtain a dealer’s license from the department. Application for the license must be made on a form prescribed by the department.

Section 487.159(1), F.S., specifies that a person claiming damage or injury to property, animals, or human beings from application of a pesticide must file with the department a written statement claiming



damages, on a form prescribed by the department, within 48 hours after the damage or injury becomes apparent.

Section 487.160, F.S., requires that licensed private applicators supervising 15 or more unlicensed applicators or mixer loaders and licensed public applicators and licensed commercial applicators to maintain certain records with respect to the application of restricted pesticides, including the type and quantity of pesticide, method of application, crop treated, and dates and location of application. Other licensed private applicators supervising less than 15 unlicensed applicators or mixer loaders must maintain records with respect to the date, type, and quantity of restricted-use pesticides used. Licensees must keep records for a period of two years from the date of the application of the pesticide, and must furnish to the department a copy of the records upon written request by the department.

Section 487.172, F.S., requires the department to develop a program to educate and inform antifouling paint<sup>3</sup> applicators, vessel owners, and interstate and intrastate paint manufacturers and distributors in the state about the characteristics and hazards associated with organotin<sup>4</sup> compounds in antifouling paints and the state laws restricting their use.

Section 487.2031(7), F.S., defines “material safety data sheet” to mean written, electronic, or printed material concerning an agricultural pesticide that sets forth the following information:

- The chemical name and the common name of the agricultural pesticide.
- The hazards or other risks in the use of the agricultural pesticide, including:
  - The potential for fire, explosions, corrosivity, and reactivity.
  - The known acute health effects and chronic health effects of exposure to the agricultural pesticide, including those medical conditions that are generally recognized as being aggravated by exposure to the agricultural pesticide.
  - The primary routes of entry and symptoms of overexposure.
- The proper handling practices, necessary personal protective equipment, and other proper or necessary safety precautions in circumstances that involve the use of or exposure to the agricultural pesticide, including appropriate emergency treatment in case of overexposure.
- The emergency procedures for spills, fire, disposal, and first aid.
- A description of the known specific potential health risks posed by the agricultural pesticide, which is written in lay terms and is intended to alert any person who reads the information.
- The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

### *Effect of Proposed Changes*

The bill amends s. 487.041(3)(d), F.S., to provide that if the department receives written notice from a pesticide registrant that the registrant is discontinuing the distribution of a brand of pesticide and the registrant maintains the registration of that brand for at least two years, then the registrant is not required to continue the registration of a pesticide for as long as it remains for sale in Florida. The discontinued brand may remain on the retailers’ shelves without further registration provided that the brand of pesticide is not distributed by the registrant in Florida during or after the minimum two-year period.

The bill amends s. 487.046(1), F.S., to allow an application for a certified applicator license to be submitted using the department’s website.

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<sup>3</sup> “Antifouling paint” means a coating, paint, or treatment that is intended for use as a pesticide, as defined in Chapter 487, F.S., to control freshwater or marine fouling organisms (barnacles, mussels, algae, bacteria, etc.).

<sup>4</sup> “Organotin compound” means any compound of tin used as a biocide in an antifouling paint.

The bill amends s. 487.047(3), F.S., to remove the reference to a form supplied by the department for the issuance of an applicator's license. This provides the option for applicants to apply for the license on the department's website.

The bill amends s. 487.048(1), F.S., to allow persons applying for a dealer's license from the department to do so by using the department's website.

The bill repeals s. 487.159(1), F.S., requiring that a person claiming damages or injuries from a pesticide application must file a written statement with the department claiming damages or injuries within 48 hours after the damage or injury becomes apparent. According to the department, crop damage is investigated as part of routine pesticide complaint investigations regardless of the timing; therefore, the 48-hour provision is not needed.

The bill amends s. 487.160, F.S., to provide that all licensed private applicators, licensed public applicators, and licensed commercial applicators must maintain certain records as described in the present situation above. This change removes the differentiation of recordkeeping requirements between those licensed private applicators who supervise 15 or more persons and those who supervise fewer than 15.

The bill repeals s. 487.172, F.S., relating to antifouling paint education programs. According to the department, these programs are now provided by pesticide registrants and the department no longer maintains a program.

The bill amends s. 487.2031(7), F.S., to remove the word "material" from the term "material safety data sheet" defined above. According to the department, "safety data sheet" is the term most commonly used in the pesticide industry.

The bill amends s. 487.2051(2), (3), and (4), F.S., to conform to the revision made to the term "safety data sheet" described above.

## **Food Safety**

### *Present Situation*

Section 500.03(1)(p), F.S., defines "food establishment" as a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include a business or activity that is regulated under s. 500.80, F.S., chapter 590, F.S., or chapter 601, F.S.<sup>5</sup> The term includes tomato packinghouses and re-packers, but does not include any other establishment that packs fruits and vegetables in their raw or natural state.

Currently, certain vending stands operated by a blind person under the supervision of the Division of Blind Services must obtain a license from the department. The Division of Blind Services conducts a periodic survey of all state properties and, where feasible, establishes vending facilities to be operated by blind licensees. These licensees are given the first opportunity to participate in the operation of vending stands on all state properties acquired after July 1, 1979.

Section 500.12(1), F.S., specifies that a food permit from the department is required of any person who operates a food establishment or retail food store, except persons operating minor food outlets, including, but not limited to, video stores, that sell commercially prepackaged, non-potentially hazardous candy, chewing gum, soda, or popcorn, provided the shelf space for those items does not exceed 12 linear feet and no other food is sold by the minor food outlet.

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<sup>5</sup> The exemption applies to cottage food operations, lodging and food service establishments, and citrus facilities.

An application for a food permit from the department must be accompanied by a fee in an amount determined by department rule, which generally cannot exceed \$650 and may be used solely for the recovery of costs for the services provided. Food permits must be renewed annually on or before January 1.

Section 500.12(8), F.S., provides that any person who, after October 1, 2000, applies for or renews a local occupational license to engage in business as a food establishment must exhibit a current food permit or an active letter of exemption from the department before the local occupational license may be issued or renewed.

Section 500.121, F.S., pertains to disciplinary actions the department may take against retail food stores, food establishments, or cottage food operations that violate provisions of chapter 500, F.S.

Section 500.121(3), F.S., provides that any administrative order made and entered by the department imposing a fine must specify the amount of the fine and the time limit for payment, not exceeding 15 days, and, upon failure of the permit holder to pay the fine within that time, the permit is subject to suspension.

Section 500.147(1), F.S., provides that the department or its duly authorized agent must have free access at all reasonable hours to any food establishment or any vehicle being used to transport or hold food in commerce for the purpose of:

- Inspecting such establishment or vehicle to determine if any provision of chapter 500, F.S., or any rule adopted under chapter 500, F.S., is being violated;
- Securing a sample or a specimen of any food after paying or offering to pay for such sample;
- Seeing that all sanitary rules adopted by the department are complied with; or
- Enforcing the special-occupancy provisions of the Florida Building Code that apply to food establishments.

Subsections (1)-(3) of s. 500.172, F.S., provide that when the department finds or has probable cause to believe that any food or food-processing equipment is in violation of the food safety laws so as to be dangerous, unwholesome, fraudulent, or unsanitary, an agent of the department can issue and enforce a stop-sale, stop-use, removal, or hold order. This order gives notice that the article or equipment is, or is suspected of being, in violation and has been detained or embargoed, and warns all persons not to remove, use, or dispose of the article or equipment by sale or otherwise until permission for removal, use, or disposal is given by the department or the court. It is unlawful for any person to remove, use, or dispose of the detained or embargoed article or equipment without permission. If an article or equipment detained or embargoed under this section has been found by the department to be in violation of law or rule, the department may, within a reasonable period of time after the issuance of such notice, petition the circuit court, in the jurisdiction of which the article or equipment is detained or embargoed, for an order for condemnation of the article or equipment. When the department has found that an article or equipment so detained or embargoed is not in violation, the department must rescind the stop-sale, stop-use, removal, or hold order.

Sections 500.301-500.306, F.S., govern the standards of enrichment for grain products. Section 500.301, F.S., provides definitions relating to the standards of enrichment for grain products. Section 500.302, F.S., prohibits the sale at retail of any grain product that does not conform to state standards of enrichment. Section 500.303, F.S., requires the department to establish by rule a state standard for each grain product defined in s. 500.301, F.S., which standard must conform so far as practicable with, and must not be inconsistent with, the federal standard of enrichment for the same product. State standards must, from time to time, be amended to conform similarly to the federal standard of enrichment. Section 500.304, F.S., provides that the department is charged with the duty of enforcing ss. 500.301-500.306, F.S., and is authorized and directed to adopt, amend, or rescind rules and orders for the efficient enforcement of such sections.

Section 500.305, F.S., provides that for the purposes of ss. 500.301-500.306, F.S., the department is authorized to:

- Take samples for analysis.
- Conduct examinations and investigations.
- Enter at reasonable times any factory, mill, bakery, warehouse, shop, or establishment where any wheat flour, cornmeal, corn grits, or rice, or any food containing any of these products, is manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof.
- Inspect any such place or vehicle; any such wheat flour, cornmeal, corn grits, rice, or food therein; and any and all pertinent equipment, materials, containers, and labeling.

Section 500.306, F.S., specifies that any person who violates any provision of ss. 500.301-500.305, F.S., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>6</sup>

Section 500.601, F.S., provides that, as used in the section, certain terms relating to the sale of meat are given the following meanings:

- “Cutting loss” means the weight of meat, fat, and bone removed from the carcass, side, quarter, or primal source during standard or custom cutting procedures.
- “Gross or hanging weight” means the weight of any single carcass, side, quarter, or primal source of meat prior to cutting or trimming such meat into any constituent part.
- “Primal source” means the following cuts of meat:
  - The round, flank, loin, rib, plate, brisket, chuck, and shank of beef.
  - The leg, flank, loin, rack (rib), and shoulder of veal, lamb, or mutton.
  - The belly, loin, ham spareribs, shoulder, and jowl of pork.
- “Seller” means any person, partnership, corporation, or association, however organized, that is engaged in the retail sale of meat.

This section does not apply to any seller whose total annual retail sales are less than \$10,000, or to any retail food business that sells multiple items, including meat, produce, dairy products, baked goods, and food staples, the primary business of which is not the retail sale of meat or meat cutting. A seller of a single carcass, side, quarter, or primal source of meat may sell such meat based on gross or hanging weight if the meat is derived from a single carcass, side, quarter, or primal source of meat. With respect to any other retail sale of meat, the seller must disclose in writing to the buyer the net weight, the selling price per pound, and the total selling price of each cut.

A seller of a single carcass, side, quarter, or primal source of meat that sells such meat based on gross or hanging weight must provide to the buyer, in writing, the following information at the times indicated:

- Prior to sale:
  - The name and address of the seller.
  - The estimated gross or hanging weight of the order.
  - The U.S.D.A. quality grade of the meat to be supplied, if so graded.
  - The estimated total price of the order.
  - The estimated cutting loss on the order.
  - A list, by name and estimated count, of each cut to be derived from each primal source.
  - The price per pound of the carcass, side, quarter, or primal source before cutting and wrapping.
  - Additional costs of cutting, wrapping, and freezing, if any.
  - A statement that the buyer may keep the cutting loss.

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<sup>6</sup> A term of imprisonment not exceeding one year or a fine not to exceed \$1,000.

- At the time of delivery:
  - The name and address of the seller.
  - The total delivered weight of the meat.
  - The cutting loss.
  - A list, by name and count, of each cut derived from each primal source.

### *Effect of Proposed Changes*

The bill amends s. 500.03(1)(p), F.S., to exempt vending stands operated by the Division of Blind Services from the definition of “food establishment.” According to the department, the Division of Blind Services has a strict program inspection and oversight along with an active food manager training for all vendors. Therefore, it is not necessary for these facilities to be inspected by the department.

The bill amends s. 500.12(1), F.S., to revise the criteria for the minor food outlet permit exemption to specify that the outlet may only sell food that is not potentially hazardous and that is not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet. The bill also removes from statute the examples of the types of food that are considered nonhazardous and the specific reference to video stores being minor food outlets.

The bill also provides that each food establishment and retail food store regulated under chapter 500, F.S., must apply for and receive a food permit before operation begins. The bill requires the department to adopt rules establishing a fee schedule paid by each food establishment and retail food store as a prerequisite to issuance or renewal of a food permit. The bill further states that food permits are not transferrable from one location or individual to another.

In addition, the bill amends s. 500.12(8), F.S., to remove an expired date, and changes the term “occupational licenses” to “business tax certificates,” which, according to the department, is the terminology currently used.

The bill amends s. 500.121(3), F.S., providing that permitholders have 21 days rather than 15 days to pay a fine. The bill also provides that failure to pay the fine within 21 days could result in revocation of the food permit, not just a suspension.

The bill also creates a new subsection (7) in s. 500.121, F.S., authorizing the department to determine that a food establishment regulated under chapter 500, F.S., requires immediate closure when the food establishment fails to comply with the chapter, or rules adopted under the chapter, and, because of such failure, presents an imminent threat to the public health, safety, and welfare. The bill also authorizes the department to accept inspection results from other state and local building officials and other regulatory agencies as justification for such actions. The department must, upon determination, issue an immediate final order to close a food establishment in the following manner:

- The division director or designee must determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Upon such determination, the department must issue an immediate final order<sup>7</sup> directing the owner or operator to cease operation and close the food establishment. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.
- The department must inspect the food establishment within 24 hours after the issuance of the order. Once the department determines that the food establishment meets the applicable requirements to resume operations, a release must be served on the owner, operator or agent of the food establishment by the department.
- A food establishment ordered by the department to cease operation and close must remain closed until released by the department or by a judicial order to reopen.

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<sup>7</sup> The order must be served upon the owner, operator or agent of the food establishment by the department.

- It is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.,<sup>8</sup> for any person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for an owner or operator of a food establishment to resist the closure of a food establishment by the department. The department may impose administrative sanctions for violations.

The bill authorizes the department to adopt rules to administer this section of law.

The bill amends s. 500.147, F.S., to provide that the department must have free access to any food records, in addition to the food establishment and any vehicles already required by current law, to facilitate the trace back or trace forward of food products in the event of a food borne illness outbreak or identification of an adulterated or misbranded food item.

The bill amends subsections (1)-(3) of s. 500.172, F.S., to add “food processing areas” and “food storage areas” to the areas in a food establishment that may come under a stop-sale, stop-use, removal, or hold order by the department if these areas are found to be in noncompliance with food safety regulations so as to be dangerous, unwholesome, fraudulent, or unsanitary. The bill also requires food establishment inspectors must be properly educated and trained on legal requirements.

The bill repeals ss. 500.301, 500.302, 500.303, 500.304, 500.305, and 500.306, F.S., which regulate the enrichment of grain. According to the department, the federal government establishes standards of enrichment for grain products, which the department then adopts by reference. The specific provisions in Florida statutes are unnecessary and not being implemented.

The bill repeals s. 500.601, F.S., which pertains to the retail sale of meat. According to the department, these functions are covered by United States Department of Agriculture and the current statute is unnecessary.

## **Agricultural Fertilizers, Feed, and Seed**

### *Present Situation*

Section 576.021, F.S., provides that a person whose name appears on a label and who guarantees a fertilizer may not distribute that fertilizer to a nonlicensee until a license to distribute has been obtained by that person from the department upon payment of a \$100 fee. All licenses expire on June 30 of each year.

A person may not distribute a specialty fertilizer in Florida until it is registered with the department by the licensee whose name appears on the label. An application for registration of each grade of specialty fertilizer must be made on a form furnished by the department and must be accompanied by an annual fee of \$100 for each specialty fertilizer that is registered. All specialty fertilizer registrations expire on June 30 of each year.

Section 576.031(2), F.S., provides that if fertilizer is distributed in bulk, five labels containing specified information must accompany the delivery of the fertilizer and be supplied to the purchaser at the time of delivery with the delivery ticket, which must show the certified net weight.

Section 576.041, F.S., provides that any fertilizer licensee who fails to timely pay a “tonnage fee” will be assessed a penalty of 1.5 percent for each month or part of a month that the fee or portion of the fee is not paid.

Section 576.041(4), F.S., provides that if the report is not filed and the inspection fee is not paid on the date due or if the report of tonnage is false, then the amount of inspection fee due is subject to a

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<sup>8</sup> *Id.*

penalty of 10 percent or \$25, whichever is greater. The penalty will be added to the inspection fee due and constitutes a debt, which becomes a claim and lien against the surety bond or certificate of deposit.

Section 576.041(6), F.S., requires an applicant for a fertilizer license to post with the department a surety bond, or assign a certificate of deposit, in an amount required by department rule to cover fees for any reporting period. The amount cannot be less than \$1,000. The surety bond must be executed by a corporate surety company authorized to do business in the state. The certificate of deposit must be issued by any recognized financial institution doing business in the United States. The department must establish, by rule, whether an annual or continuous surety bond or certificate of deposit will be required and must approve each surety bond or certificate of deposit before acceptance. The department must examine and approve the sufficiency of all such bonds and certificates of deposit before acceptance. When the licensee ceases operation, said bond or certificate of deposit must be returned, provided there are no outstanding fees due and payable.

Current law directs the department to sample, test, inspect, and make analyses of fertilizer sold or offered for sale within the state.<sup>9</sup> Section 576.051(3), F.S., provides that the official analysis<sup>10</sup> of fertilizer must be made from the official sample. The department, before making the official analysis, must take a sufficient portion from the official sample for check analysis and place that portion in a bottle sealed and identified by number, date, and the preparer's initials. The official check sample must be kept until the analysis of the official sample is completed. However, the licensee may obtain upon request a portion of the official check sample. Upon completion of the analysis of the official sample, a true copy of the fertilizer analysis report must be mailed to the licensee of the fertilizer from whom the official sample was taken and to the dealer or agent, if any, and purchaser, if known. This fertilizer analysis report must show all determinations of plant nutrient and pesticides. If the official analysis conforms to the law, the official check sample may be destroyed. If the official analysis does not conform to the law, the official check sample must be retained for a period of 90 days from the date of the fertilizer analysis report of the official sample.

Section 576.061(4), F.S., provides that when it is determined by the department that a fertilizer has been distributed without being licensed or registered, or without labeling, the department must require the licensee to pay a penalty in the amount of \$100.

Under current law,<sup>11</sup> a commercial fertilizer is deemed deficient in plant food if the analysis of any nutrient is below the guarantee by an amount exceeding the investigational allowances. Section 576.071, F.S., provides that the commercial value used in assessing penalties for any deficiency must be determined by using annualized plant nutrient values contained in one or more generally recognized journals.

Section 576.087, F.S., directs the department to establish specific requirements for anti-siphon devices for an irrigation system used for the application of fertilizer. Any governmental agency that requires antisiphon devices on irrigation systems used for the application of fertilizer must use the specific antisiphon device requirements adopted by the department.

Section 576.101(2), F.S., authorizes the department to place any licensee on a probationary status when the deficiency levels of samples taken from that licensee do not meet minimum performance levels established by statute.

Section 578.08, F.S., requires that every person prior to selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, must first register with the department as a seed dealer.

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<sup>9</sup> Section 576.051(1), F.S.

<sup>10</sup> As per section 576.051(2), F.S., the department is directed to sample, test, inspect, and make analyses of fertilizer sold or offered for sale within the state.

<sup>11</sup> Section 576.061, F.S.,

The application for registration includes the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application for registration must be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of the seed for the last preceding license year as follows:

- Receipts less than \$2,500.01, fee of.....\$100
- Receipts more than \$2,500 and less than \$5,000.01, fee of.....\$200
- Receipts more than \$5,000 and less than \$10,000.01, fee of.....\$350
- Receipts more than \$10,000 and less than \$20,000.01, fee of.....\$800
- Receipts more than \$20,000 and less than \$40,000.01, fee of.....\$1,000
- Receipts more than \$40,000 and less than \$70,000.01, fee of.....\$1,200
- Receipts more than \$70,000 and less than \$150,000.01, fee of.....\$1,600
- Receipts more than \$150,000 and less than \$400,000.01, fee of.....\$2,400
- Receipts more than \$400,000, fee of.....\$4,600

Section 580.036, F.S., establishes the powers and duties of the department as it pertains to commercial feed and feedstuff,<sup>12</sup> and grants the department with rulemaking authority to enforce the provisions of chapter 580, F.S.<sup>13</sup> The rules adopted by the department must be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable. The rules must also include standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and that ensures beef and poultry products are safe for human consumption.

Section 580.041, F.S., provides that each distributor of commercial feed must annually obtain a master registration before her or his brands are distributed in the state. The department must furnish the registration forms requiring the distributor to state that he or she will comply with all provisions of chapter 580, F.S., and applicable rules. The registration form must identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility in the state and must be signed by the owner; by a partner, if a partnership; or by an authorized officer or agent, if a corporation. All registrations expire on June 30 of each year.

Section 580.071(1), F.S., provides that a commercial feed or feedstuff is deemed to be adulterated in the following instances:

- If it bears or contains any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health. However, if the substance is not an additive, the feed is not considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health;
- If it bears or contains any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity;
- If it is, or it bears or contains, any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act, respectively;
- If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; however, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; or

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<sup>12</sup> Section 580.031(10), F.S., defines feedstuff as edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.

<sup>13</sup> Chapter 580, F.S., pertains to the regulation of commercial feed and feedstuff.



- If it is, or it bears or contains, any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.

### *Effect of Proposed Changes*

The bill amends s. 576.021, F.S., to tie the registration of fertilizer to a company rather than a person. The bill also requires each brand of fertilizer to be registered, and requires the application for registration for each brand and grade of fertilizer to be submitted either on a form prescribed by department rule or using the department's website.

The bill amends s. 576.031(2), F.S., to reduce the number of delivery labels required when distributing fertilizer in bulk from five to two. According to the department, two labels are adequate for regulatory purposes.

The bill amends s. 576.041(3), F.S., to change the term "tonnage" fee to "inspection" fee. According to the department, the fee pertains to the inspection. The amount of the fee is just based on the tonnage sold.

The bill amends s. 576.041(4), F.S., to remove the provision stating that not paying the inspection fee or giving a false tonnage report constitutes a debt and can become a claim and lien against the surety bond or certificate of deposit. According to the department, current law provides sufficient authority<sup>14</sup> to impose fines or revoke licensure for licensees who are not in compliance.

The bill repeals s. 576.041(6), F.S., requiring an applicant for a fertilizer license to post with the department a surety bond, or assign a certificate of deposit, to cover fees for any reporting period. According to the department, other statutory provisions provide them with sufficient authority<sup>15</sup> to impose fines or revoke licensure for licensees who are not in compliance.

The bill amends s. 576.051(3), F.S., to reduce from 90 to 60 the number of days that the official check sample must be retained if it does not conform to the requirements of chapter 576, F.S. According to the department, this change removes a statutory conflict between the amount of time a company has to challenge the department's findings and the amount of time the company has to reimburse the consumer.

The bill repeals s. 576.061(4), F.S., which requires licensees to pay a penalty if it is determined that a fertilizer has been distributed without being licensed or registered. The department has other statutory authority<sup>16</sup> to cover violations of this nature.

The bill amends s. 576.071, F.S., to require the department to survey the state's fertilizer industry using annualized plant nutrient values contained in one or more generally recognized journals.

The bill repeals ss. 576.087(3) and (4), F.S., relating to requirements for antisiphon devices. According to the department, new technology developed by the industry is already beyond what the department has the expertise to recommend, and as a result, this program has become outdated.

The bill repeals s. 576.101(2), F.S., relating to placing licensees on probationary status for inadequate deficiency levels. According to the department, the deficiency levels are subject to fluctuations when not taken in ideal conditions, such as at the plant. This can result in licensees being placed on probationary status erroneously.

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<sup>14</sup> Section 576.061(5), F.S.

<sup>15</sup> *Ibid*

<sup>16</sup> Sections 576.061(5) and 576.111, F.S.

The bill amends s. 578.08, F.S., to require an application for registration to be filed using a form prescribed by department rule or using the department's website. The bill also reduces the registration fee for seed dealers that distribute small amounts of seed by adding the following two new categories for the annual registration fee:

- For receipts of less than \$500.00, the fee is \$10; and
- For receipts of \$500 but less than \$1,000.00, the fee is \$25.

The bill amends s. 580.036, F.S., to require the commercial feed standards described above to be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council.

The bill amends s. 580.041, F.S., to require an application for registration to be filed using a form prescribed by the department or using the department's website. According to the department, this provides the option for applicants to apply for the license on the department's website.

The bill amends s. 580.071, F.S., to expand the criteria requiring a determination that a commercial feed or feedstuff is adulterated to include the following:

- If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
- If it is prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health; or
- If it is, in whole or in part, the product of a diseased animal or of an animal that has died by a means other than slaughter that is deemed unsafe as defined under the Federal Food, Drug, and Cosmetic Act.

## **Plant Industry**

### *Present Situation*

In 2008, the Legislature established a five-year pilot program within the department to permit the planting of *Casuarina cunninghamiana* (Australian pine trees) as a windbreak for commercial citrus groves growing fresh fruit in specified areas<sup>17</sup> of the state.<sup>18</sup> The purpose of the pilot program was to determine if the use of the trees as an agricultural pest and disease windbreak poses any adverse environmental consequences. At the end of the five-year pilot program,<sup>19</sup> if the department's Noxious Weed and Invasive Plant Review Committee (committee), in consultation with the Department of Environmental Protection (DEP), and a citrus industry representative who has a *Casuarina cunninghamiana* windbreak (industry representative), determine that the potential is low for adverse environmental impacts from planting the trees as windbreaks, the department was authorized to develop rules to allow the use of the trees as windbreaks for commercial citrus groves in other areas of the state.

Under the pilot program, each application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed \$500. A special permit is required for each noncontiguous commercial citrus grove and must be renewed every five years. The property owner is responsible for maintaining and producing for inspection the original nursery invoice with certification documentation. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the special permit and copies of all invoices and certification documentation prior to the closing of the sale.<sup>20</sup>

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<sup>17</sup> Indian River, St Lucie, and Martin Counties.

<sup>18</sup> Section 581.091(5), F.S.

<sup>19</sup> The five-year pilot program ended in 2013.

<sup>20</sup> Section 581.091(c), F.S.

Each application must also include a baseline survey of all lands within 500 feet of the proposed tree windbreak showing the location and identification of species of all existing *Casuarina cunninghamiana*. Nurseries authorized to produce the trees must obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. The importation of the trees from any area outside the state to be used as a propagation source tree is prohibited. Each male source tree must be registered by the department as being a horticulturally true-to-type male plant and must be labeled with a source tree registration number. Each nursery application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed \$200. Special permits must be renewed annually. The department must, by rule, set the amount of an annual fee, not to exceed \$50, for each tree registered as a source tree. Nurseries may only sell the trees to a person with a special permit as specified in statute. The source tree registration numbers of the parent plants must be documented on each invoice or other certification documentation provided to the buyer.<sup>21</sup>

All of the trees must be destroyed by the property owner within six months after:<sup>22</sup>

- 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. This determination must be based on, but not limited to, the recommendation of the committee and DEP, and in consultation with an industry representative.

If the owner or person in charge refuses or neglects to comply, the director or her or his authorized representative may, under authority of the department, proceed to destroy the plants. The expense of the destruction must be assessed, collected, and enforced against the owner by the department. If the owner does not pay the assessed cost, the department may record a lien against the property.<sup>23</sup>

The use of the trees for windbreaks does not preclude the department from issuing permits for the research or release of biological control agents to control *Casuarina* species in accordance with current law. The use of the trees for windbreaks must not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or invasive plants, including *Casuarina cunninghamiana*, nor may any other agency or local government remove any of the trees planted as a windbreak under special permit issued by the department.<sup>24</sup>

The department is required to develop and implement a monitoring protocol to determine invasiveness of the trees. The monitoring protocol must, at a minimum, require:<sup>25</sup>

- Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of the 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 department inspectors who have been trained to identify the trees and to make determinations of whether the trees have spread beyond the permitted windbreak location.
- Any new seedlings found within 500 feet of the planted windbreak to be removed, identified to the species level, and evaluated to determine if hybridization has occurred.
- The department to 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

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<sup>21</sup> Section 581.091(d) and (e), F.S.

<sup>22</sup> Section 581.091(f), F.S.

<sup>23</sup> *Id*

<sup>24</sup> Section 581.091(h), F.S.

<sup>25</sup> Section 581.091(i), F.S.

inspections and the results of those inspections to the committee, DEP, and an industry representative.

If the department determines that female flowers or cones have been produced on any of the trees that have been planted under a special permit issued by the department, the property owner is responsible for destroying the trees. The department must notify the property owner of the timeframe and method of destruction.<sup>26</sup>

If at any time the department determines that hybridization has occurred during the pilot program between the trees planted as a windbreak and other *Casuarina* species, the department must expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research must be evaluated by the committee, DEP, and an industry representative. 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 an industry representative, the pilot program must be permanently suspended.<sup>27</sup>

Each application for a special permit must be accompanied by a fee as prescribed in statute and an agreement that the property owner will abide by all permit conditions including the removal of the trees if invasive populations or other adverse environmental factors are determined to be present by the department as a result of the use of the trees as windbreaks. The application must include, on a form provided by the department:<sup>28</sup>

- The name of the applicant and the applicant's address or the address of the applicant's principal place of business;
- A statement of the estimated cost of removing and destroying the trees that are the subject of the special permit; and
- The basis for calculating or determining that estimate.

If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant must notify the department within 30 business days of any change of address or change in the principal place of business. The department must mail all notices to the applicant's last known address.<sup>29</sup>

Upon obtaining a permit, the permitholder must annually maintain the trees authorized by a special permit as required in the permit. If the permitholder ceases to maintain the trees as required by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder must remove and destroy the trees in a timely manner as specified in the permit.<sup>30</sup>

If the department determines that the permitholder is no longer maintaining the trees subject to the special permit and has not removed and destroyed the trees authorized by the special permit; determines that the continued use of the trees as a windbreak presents an imminent danger to public health, safety, or welfare; or determines that the permitholder has exceeded the conditions of the authorized special permit, the department may issue an immediate final order. A copy of the immediate final order must be mailed to the permitholder.<sup>31</sup>

If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the trees subject to the special permit within 60 days after issuance of the

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<sup>26</sup> Section 581.091(j), F.S.

<sup>27</sup> Section 581.091(k), F.S.

<sup>28</sup> Section 581.091(l), F.S.

<sup>29</sup> *Id*

<sup>30</sup> *Id*

<sup>31</sup> *Id*

order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may remove and destroy the trees that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the trees that demonstrates specific facts showing why the trees could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying the trees subject to a special permit.<sup>32</sup>

Section 581.131(8), F.S., requires the department to provide to a registered nurseryman written notice and renewal forms 60 days prior to the annual renewal date informing the person of their certificate of registration renewal date and applicable fees.

#### *Effect of Proposed Changes*

The bill amends s. 581.091(5), F.S., to eliminate the Australian pine permitting pilot program so that permits for the planting of Australian pine trees as a windbreak for commercial citrus groves growing fresh fruit are not limited to certain counties, but are available statewide. In addition, the bill streamlines the permitting requirements, as persons seeking to grow the trees as windbreaks for citrus groves are still required to be permitted by the department. The bill also eliminates the requirement that the department maintain a monitoring protocol to determine the invasiveness of the trees. In addition, the bill removes the provision that nurseries can only sell Australian pine trees to a person with a special permit that was established under the pilot program.

The bill amends section 581.131, F.S., to change the notice period for renewal of certificate of registration and applicable fees from 60 days to 30 days.

### **Florida Forest Service**

#### *Present Situation*

Section 589.011(1), F.S., authorizes the Florida Forest Service (FFS) to grant privileges, permits, leases, and concessions for the use of state forest lands, timber, and forest products for certain purposes.

Section 589.011(3), F.S., authorizes FFS to set and charge reasonable fees or rent for the use or operation of facilities on state forests or any lands leased by or otherwise assigned to FFS for management purposes.

Section 589.20, F.S., provides that FFS may cooperate with other state agencies, who are custodians of lands that are suitable for forestry purposes, in the designation and dedication of such lands for forestry purposes. Upon the designation and dedication of said lands for these purposes by the agencies concerned, the lands must be administered by the FFS.

Section 590.02(7), F.S., authorizes FFS to organize, staff, equip, and operate the Florida Forest Training Center. The center serves as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

#### *Effect of Proposed Changes*

The bill amends s. 589.011(1), F.S., to authorize FFS to grant privileges, permits, leases, and concessions for the use of any lands leased by or otherwise assigned to FFS for management purposes, if such use is authorized by an approved land management plan or by an interim assignment letter that identifies the interim management activities issued by DEP.

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<sup>32</sup> *Id*

The bill amends s. 589.011(3), F.S., to authorize FFS to set and charge reasonable rentals or charges for the use or operation of facilities on state forests or any lands leased by or assigned to FFS for management purposes, as well as reasonable fees, rentals, or charges for the use or operation of concessions in state forests. The bill also provides that fees, rentals, or charges for the use of facilities and concessions must be based upon the cost and extent of recreational facilities and services, geographic location, seasonal public demand, fees charged by other governmental and private entities for comparable services and activities, and market value and demand for forest products.

The bill amends s. 589.20, F.S., to specify that FFS is authorized to cooperate with water management districts, municipalities, and other government entities in the designation and dedication of lands that are suitable for forestry purposes.

The bill amends s. 590.02(7), F.S., to rename the Florida Forest Training Center to the Withlacoochee Training Center.

The bill creates s. 590.02(11), F.S., to rename the Madison Forestry Station as the Harvey Greene Sr. Forestry Station. Mr. Greene sold the land where the forestry station is located to the state at a time when land donations were not accepted. Mr. Greene then used the proceeds of the sale to purchase forestry equipment which he donated for use by private citizens in Madison County for planting trees and fighting wildfires.

## **Goethe and Withlacoochee State Forests**

### *Present Situation*

Section 589.081, F.S., provides that FFS must pay 15 percent of the gross receipts from Withlacoochee State Forest and the Goethe State Forest to each fiscally constrained county, as described in s. 218.67(1), F.S., in which a portion of the respective forest is located in proportion to the forest acreage located in such county. The funds must be equally divided between the board of county commissioners and the school board of each fiscally constrained county.

### *Effect of Proposed Changes*

The bill repeals s. 589.081, F.S., and transfers to s. 589.08, F.S., the language requiring FFS to pay 15 percent of the gross receipts from Goethe State Forest to each fiscally constrained county in which a portion of the respective forest is located in such county. According to the department, the Withlacoochee State Forest is not located in any fiscally constrained counties. Therefore, the reference to this state forest is unnecessary.

## **Wildfire Prevention and Prescribed Burns**

### *Present Situation*

Section 590.091, F.S., provides that FFS may annually designate, on or before October 1, those railroad rights-of-way in the state that are known wildfire hazard areas. It is the duty of all railroad companies operating in the state to maintain their rights-of-way designated as provided in Florida law, as known wildfire hazard areas, in an approved condition as prescribed by rule of FFS and to provide adequate firebreaks, where needed, to prevent fire from igniting or spreading from rights-of-way to adjacent property.

Section 590.125(2), F.S., provides that, for noncertified burning, persons may be authorized to broadcast burn or pile burn in accordance with Florida law if:

- There is specific consent of the landowner or his or her designee;
- Authorization has been obtained from FFS or its designated agent before starting the burn;

- There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;
- The fire remains within the boundary of the authorized area;
- The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;
- FFS does not cancel the authorization; and
- FFS determines that air quality and fire danger are favorable for safe burning.

Current law also provides that a person who broadcast burns or pile burns in a manner that violates any requirement of s. 590.125(2), F.S., commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed \$500.

### *Effect of Proposed Changes*

The bill repeals s. 590.091, F.S. According to the department, the practice of designating railroad rights-of-way as known wildfire hazard areas is no longer necessary due to the advent of underground utilities.

The bill amends s. 590.125, F.S., to provide that, for noncertified burns, a new authorization is not required for smoldering that occurs within the authorized burn area unless the person named responsible in the burn authorization or a designee conducts new ignitions. The bill also provides that monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering. According to the department, this creates consistency in how certified and noncertified burns are considered a public threat and when they are considered “managed.”

## **Greenbelt Classification and Dispersed Water Storage Programs**

### *Present Situation*

The Florida Constitution states that all property must be given a just valuation for ad valorem taxation purposes, as prescribed by general law.<sup>33</sup> The Florida Constitution also requires ad valorem taxation to be at a uniform rate, but provides that property “may be [taxed] at different rates but shall never exceed two mills on the dollar of assessed value.”<sup>34</sup> In addition, property owned by a municipality that is used for municipal or public purposes is exempt from ad valorem taxation.<sup>35</sup> In setting a just valuation on a piece of property for ad valorem taxation purposes, the property appraiser must consider the following:

- The present cash value of the property;
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;
- The location of the property;
- The quantity or size of the property;
- The cost of said property and the present replacement value of any improvements therein;
- The condition of the property;
- The income from the property; and
- The net proceeds of the sale of the property.<sup>36</sup>

However, the Florida Constitution also authorizes the Legislature to enact a “greenbelt classification” by law, which provides that “agricultural land . . . may be classified by general law and assessed solely on

<sup>33</sup> Art. VII, s. 4, Florida Constitution.

<sup>34</sup> Art. VII, s. 2, Florida Constitution.

<sup>35</sup> Art. VII, s. 3(a), Florida Constitution.

<sup>36</sup> s. 193.011, F.S.

the basis of character or use.”<sup>37</sup> Pursuant to this constitutional authority, the Florida Legislature enacted s. 193.461, F.S.,<sup>38</sup> which implements the constitutional provision and requires the local property appraiser, on an annual basis, to “classify for assessment purposes all lands within the county as either agricultural or nonagricultural.”<sup>39</sup> Agricultural lands are to be “only those lands that are used primarily for bona fide agricultural purposes.”<sup>40</sup> The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land.<sup>41</sup> To determine whether the use of the land for agricultural purposes is bona fide, the following factors must be considered by the property appraiser:

- The length of time the land has been used for agricultural purposes;
- Whether the use has been continuous;
- The purchase price paid;
- Size (as it relates to agricultural use, though a minimum acreage may not be required);
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;
- Whether the land is under lease; and
- Other factors that may become applicable.<sup>42</sup>

Additionally, lands may not be classified as agricultural in a given year unless an application is filed before March 1 of that year by the landowner.<sup>43</sup> Failure to make a timely application qualifies as a waiver of the classification for one year. However, an applicant that fails to file by March 1 but is qualified to receive an agricultural classification for his or her land may file a petition with the value adjustment board requesting that the classification be granted.<sup>44</sup> Following the initial classification of land as agricultural, the requirement for filing an annual application or statement for classification may be waived if recommended by the county property appraiser and approved by a majority vote of the relevant governing body.<sup>45</sup>

After property is classified as agricultural lands, the property’s value is assessed based solely on its agricultural use.<sup>46</sup> This valuation is determined by the property appraiser using only the following factors:

- The quantity and size of the property;
- The condition of the property;
- The present market value of the property as agricultural land;
- The income produced by the property;
- The productivity of land in its present use;
- The economic merchantability of the agricultural product; and
- Such other agricultural factors that may be applicable.<sup>47</sup>

In 2000, the Legislature amended s. 193.461, F.S., to assist farmers whose lands were taken out of production by a state or federal citrus eradication or quarantine program.<sup>48</sup> The law was passed after the Department of Agriculture and Consumer Services (DACS) implemented an eradication and

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<sup>37</sup> Art. VII, s. 4(a), Florida Constitution.

<sup>38</sup> Originally s. 193.201, F.S. (1959), ch. 59-226, s. 1, L.O.F.

<sup>39</sup> s. 193.461(1), F.S.

<sup>40</sup> s. 193.461(3)(b), F.S.

<sup>41</sup> *Id.* “Agricultural purposes” include, but are not limited to, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture, aquaculture, sod farming, and “all forms of farm products . . . and farm production.” s. 193.461(5), F.S.

<sup>42</sup> s. 193.461(3)(b)I, F.S.

<sup>43</sup> s. 193.461(3)(a), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> s. 193.461(6)(a), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Ch. 00-308, s. 3, L.O.F.



quarantine program in January 2000 to eliminate the citrus canker disease that was ravaging the Florida citrus crop.<sup>49</sup> The eradication policy mandated the removal of any infected trees and other citrus trees within a 1,900-foot radius of an infected tree in both residential areas and commercial groves.

Section 193.461, F.S., requires lands classified for assessment purposes as agricultural lands that are taken out of production by any state or federal eradication or quarantine program to continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs that are converted to fallow or otherwise non-income producing uses must continue to be classified as agricultural lands and be assessed at a de minimis value of no more than \$50 per acre, on a single year assessment methodology, unless the land is converted to other income-producing agricultural uses. The eradication program ended in January 2006 following a statement by the United States Department of Agriculture (USDA) that eradication was infeasible, which was accompanied by a subsequent withdrawal of funding by the USDA.<sup>50</sup> The individual citrus canker quarantine programs have also been eliminated.<sup>51</sup>

In an effort to increase water supplies and improve water quality, some water management districts (WMDs) have established dispersed water storage programs. These programs are typically public-private partnerships between an agricultural landowner and a WMD where the private landowner allows agricultural land to be used by the WMD to store water during wet periods. A common reason for establishing one of these programs is to set up a water retention system.

Water retention systems typically serve to control stormwater runoff before it is discharged to surface waters and to minimize point source and non-point source pollution prior to entry into receiving water bodies. An example of such a program is the Florida Ranchlands Environmental Services Project sponsored by the South Florida Water Management District (SFWMD), which ran from 2006 to 2011. This program, which involved the participation of eight ranchers, “paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters.”

In 2013, the SFWMD also invested \$3 million in a water farming pilot project that will pay citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries. In total, the SFWMD (where such programs are concentrated) has implemented eighteen dispersed water management projects on private lands, which are listed in the following table:

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<sup>49</sup> See *Eradication*, UF/IFAS EXTENSION, available at <http://www.crec.ifas.ufl.edu/extension/canker/eradication.shtml>.

<sup>50</sup> *Citrus Canker Fact Sheet*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, available at <http://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Pests-Diseases/Citrus-Health-Response-Program/Citrus-Canker/Citrus-Canker-FAQs>.

<sup>51</sup> *Id.*

Project Name	Average Annual Retention/Storage (ac-ft/yr)	Project Area (acres)	Annual Payments to Landowner	Length of Agreement	Total Cost at End of Agreement
West Waterhole Pasture	5,000	2,370	\$493,750	Year 8 of 8	\$2,661,414
Rafter T Ranch	1,145	5,172	\$92,490	Year 7 of 9	\$986,464
Syfrett Ranch West (Non-Operational)	(140)	529	\$41,000	3 Years	\$183,500
Payne and Sons	932	432	\$61,133	3 Years	\$298,489
Williamson Cattle Company	150	242	\$70,000	3 Years	\$275,000
Alderman-Deloney Ranch	147	170	\$25,000	Year 3 of 10	\$253,272
Buck Island Ranch	1,573	1,048	\$173,600	Year 3 of 10	\$1,737,928
Dixie West	315	1,495	\$51,500	Year 2 of 10	\$522,228
Dixie Ranch	856	3,771	\$146,500	Year 2 of 10	\$1,482,015
Lost Oak Ranch	374	1,832	\$55,000	Year 1 of 10	\$611,030
Triple A Ranch (Under Construction)	397	106	\$28,500	Year 1 of 10	\$607,186
Willaway Cattle & Sod	229	69	\$1,879	Year 1 of 10	\$344,279
XL Ranch	887	3,227	\$130,150	Year 3 of 10	\$1,353,915
Caulkins Citrus (Under Construction)	6,780	413	\$480,830	Year 1 of 3	\$1,263,636
Nicodemus Slough (Under Construction)	34,000	15,906	\$2,968,328	Year 1 of 8	\$28,646,622
Harbour Ridge	667	178	\$0	2 Years	\$89,000
Indiantown Citrus Growers Phase I and II	3,550	492	\$0	2 Years	\$267,853
Basinger Grove (Non-Operational)	(7,500)	15,000	\$0	3 Years	\$0
<b>TOTAL</b>	<b>57,002</b>	<b>52,452</b>	<b>\$4,819,660</b>		<b>\$41,583,831</b>

### *Effect of Proposed Changes*

The bill allows landowners who do not file an application for agricultural classification by the annual March 1 deadline to provide the property appraiser evidence that the landowner was unable to apply in a timely manner or otherwise demonstrate extenuating circumstances. The evidence must be provided to the property appraiser within twenty-five (25) days after the landowner receives the notice of proposed property taxes, and before the landowner files a petition with the value adjustment board. If the property appraiser finds the evidence sufficient, the property appraiser may grant the classification. If the property appraiser determines that the applicant failed to produce sufficient evidence, the applicant may file a petition with the value adjustment board as provided under current law, and the value adjustment board may determine whether the agricultural classification should be granted for the current year.

The bill also requires lands already classified as agricultural that participate in a dispersed water storage program, pursuant to a contract with DEP or a WMD which requires flooding of land, to continue to be classified as agricultural as long as the lands are included in the program or a successor program. The bill also requires the lands to be assessed as nonproductive agricultural lands. The bill also specifies that any land participating in a dispersed water storage program that is diverted to a nonagricultural use must be assessed under s. 193.011, F.S., which lists the factors that must be considered by a property appraiser when valuing nonagricultural property for ad valorem tax purposes.

### **Water Storage or Water Quality Improvement Projects on Agricultural Lands**

### *Present Situation*

If an agreement is entered into between DACS or a WMD and a private landowner for the purpose of developing a water storage or water quality improvement project, s. 373.4591, F.S., *requires* a baseline condition determining the extent of wetlands and other surface waters to be established and documented in the agreement before improvements are constructed.<sup>52</sup> The baseline, not the wetlands that might exist once the water storage or water quality project is complete, is considered the extent of wetlands and other surface waters for the purpose of regulation for the duration of the agreement and after its expiration.<sup>53</sup>

If a waterbody or segment of a waterbody is designated as impaired, the Clean Water Act (CWA) requires the state to set a total maximum daily load (TMDL),<sup>54</sup> which establishes the maximum amount of a given pollutant the waterbody can accept while still meeting water quality standards associated with its designated use.<sup>55</sup> Section 403.067(7), F.S., establishes the requirements for implementing a TMDL and provides for the development of a basin management action plan (BMAP). A BMAP is comprehensive set of strategies for restoring impaired waters by reducing pollutant loadings to meet the allowable loadings established in a TMDL. Section 403.067(7), F.S., also authorizes DACS to develop and adopt suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by DEP for agricultural pollutant sources to meet a specific TMDL for an impaired waterbody.<sup>56</sup> Best management practices can include, among other things, projects that hold back water for storage purposes and pollution reduction purposes, which may result in an increased area of wetlands or surface waters on private agricultural property.

### *Effect of Proposed Changes*

If the Department of Agriculture and Consumer Services (DACS) or a WMD and a private landowner enter into a best management practices agreement for water storage and water quality improvements on the landowner's property as part of the total maximum daily load program established in s. 403.067(7)(c), F.S., the bill allows the development of a baseline that sets the extent of wetlands and surface water on the property and allows the baseline to be included in the agreement before improvements are constructed. The baseline may be established at the option and expense of the private landowner. The baseline, not the wetlands that might exist once the water storage or water quality project is complete, will be considered the extent of wetlands and other surface waters for the purpose of regulation for the duration of the agreement and after its expiration.

## **Aquaculture**

### *Present Situation*

Section 379.361(5), F.S., requires that before receiving an Apalachicola Bay oyster harvesting license for the first time, an applicant must attend an educational seminar of not more than 16 hours in length, which has been developed and is conducted jointly by DEP's Apalachicola National Estuarine Research Reserve, the Fish and Wildlife Conservation Commission's Division of Law Enforcement, and the department's Apalachicola District Shellfish Environmental Assessment Laboratory. The seminar must address, among other things, oyster biology, conservation of the Apalachicola Bay, sanitary care of oysters, small business management, and water safety. The seminar must be offered five times per year, and each person attending receives a certificate of participation to present when obtaining an Apalachicola Bay oyster harvesting license.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> CWA s. 402. Section 403.067, F.S., authorizes DEP to establish TMDLs in Florida.

<sup>55</sup> *Id.*

<sup>56</sup> s. 403.067(7)(c)2., F.S.

Section 597.003(k), F.S., empowers the department to make available state lands and the water column for the purpose of producing aquaculture products when the aquaculture activity is compatible with state resource management goals, environmental protection, and proprietary interest and when the state lands and waters are determined to be suitable for aquaculture development by the Board of Trustees of the Internal Improvement Trust Fund. The department is also responsible for all saltwater aquaculture activities located on sovereignty submerged land or in the water column above such land and adjacent facilities directly related to the aquaculture activity.

Section 597.004(1), F.S., requires that any person engaging in aquaculture must be certified by the department. To receive a certificate of registration, the applicant must submit the following information to the department:

- Applicant's name/title.
- Company name.
- Complete mailing address.
- Legal property description of all aquaculture facilities.
- Actual physical description street address for each aquaculture facility.
- Description of production facilities.
- Aquaculture products to be produced.
- An annual registration fee of \$100. The annual registration fee is waived for each elementary, middle, or high school and each vocational school that participates in the aquaculture certification program.
- Documentation that the rules adopted pursuant to s. 597.004(2)(a), F.S., have been complied with.

Section 597.020(1)(a), F.S., authorizes the department to adopt by rule regulations, specifications, and codes relating to sanitary practices for catching, cultivating, handling, processing, packaging, preserving, canning, smoking, and storing oysters, clams, mussels, scallops, and crabs.

#### *Effect of Proposed Changes*

The bill amends s. 379.361(5), F.S., requiring participation in the educational seminar each time an Apalachicola Bay oyster harvesting license is obtained or renewed.

The bill amends s. 597.003(k), F.S., requiring the department to provide training as necessary to lessees for aquaculture activities.

The bill amends s. 597.004(1), F.S., requiring applicants for a certificate of registration to submit a certificate of training, if required under the best management practices, in addition to the other information currently required.

The bill amends s. 597.020(1)(a), F.S., authorizing the department to adopt by rule training requirements relating to sanitary practices for catching, cultivating, handling, processing, packaging, preserving, canning, smoking, and storing oysters, clams, mussels, scallops, and crabs.

## **Miscellaneous**

### Joint Task Force on State Agency Law Enforcement Communications

#### *Present Situation*

Section 282.709(2), F.S., creates the Joint Task Force on State Agency Law Enforcement Communications (task force) to advise the Department of Management Services (DMS) of member-agency needs relating to the planning, designing, and establishment of the statewide communication system. The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation appointed by the secretary of that department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles appointed by the executive director of that department.
- A representative of the Department of Law Enforcement appointed by the executive director of that department.
- A representative of the Fish and Wildlife Conservation Commission appointed by the executive director of the commission.
- A representative of the Department of Corrections appointed by the secretary of that department.
- A representative of the Division of State Fire Marshal of the Department of Financial Services appointed by the State Fire Marshal.
- A representative of the Department of Transportation appointed by the secretary of that department.

#### *Effect of Proposed Changes*

The bill amends s. 282.709(2), F.S., to include a representative from the department who is appointed by the commissioner.

#### Florida Coordinating Council on Mosquito Control

##### *Present Situation*

Section 388.46 (2)(c)4., F.S., requires the Florida Coordinating Council on Mosquito Control to prepare and disseminate reports, as needed, on arthropod control activities in the state to the Pesticide Review Council and other governmental organizations, as appropriate.

#### *Effect of Proposed Changes*

The bill amends s. 388.46(2)(c)4., F.S., to remove the reference to the Pesticide Review Council. This council was repealed from the statute during the 2013 legislative session. Therefore, the reference to the council is no longer relevant.

#### Classification and Sale of Eggs and Poultry

##### *Present Situation*

Section 583.01, F.S., provides that the term “dealer” means any person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or in excess of 100 pounds of dressed poultry in any one week. Egg and poultry dealers are regulated under ch. 583, F.S., and are required to possess a valid food permit under s. 583.09, F.S.

#### *Effect of Proposed Changes*

The bill amends the definition of “dealer” in s. 583.01, F.S., as it relates to a poultry dealer to provide that the threshold for what constitutes a poultry dealer is any person that offers for sale, or holds for the purpose of sale, more than 384 dressed birds in any one week. The threshold for egg dealers remains the same. According to the department, this change will benefit operators of small poultry farms by

correcting a long-standing discrepancy between state law and federal law regarding what constitutes a “dealer.”

## Agricultural Dealers

### *Present Situation*

Section 604.16, F.S., provides an exemption from the requirement for providing a surety bond or certification of deposit to the department for:

- Farmers or groups of farmers in the sale of agricultural products grown by themselves.
- A dealer in agricultural products who pays at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier’s check, wire transfer, electronic funds transfer, or debit card.
- A dealer in agricultural products who operates as a bonded licensee under the federal packers and Stockyards Act.
- Dealers who purchase less than \$1,000 worth of agricultural products from Florida producers or their agents or representatives during the peak month of such purchases within the calendar year.

Section 604.22, F.S., provides that any person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), F.S.,<sup>57</sup> who possesses and offers for sale agricultural products is required to possess and display a written document showing the date of sale, the name and address of the seller, and the kind and quantity of products for all such agricultural products. Persons who violate this provision are guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed \$500.

### *Effect of Proposed Changes*

The amends s. 604.16, F.S., to extend the exemption to include a dealer in agricultural products to the extent that the dealer purchases agricultural products from a producer owned by the exact same persons as the dealer, owned solely by the dealer, or who solely owns the dealer. The bill also amends the exemption for a dealer in agricultural products who pays at the time of purchase to include the use of a PIN debit transaction.

The bill amends s. 604.22, F.S., to replace the term of imprisonment and penalty currently provided in law with the penalties found in s. 604.30(2) and (3), F.S. Section 604.30(2), F.S., authorizes the department to issue and deliver a notice to cease and desist from a violation. Section 604.30(3)(a), F.S., authorizes the department to impose an administrative fine in the Class II category<sup>58</sup> not to exceed \$2,500. A violation of s. 604.22, F.S., will no longer be a criminal violation.

## Telephone Solicitation

### *Present Situation*

Section 501.059, F.S., provides that any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number must identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation. If any residential, mobile, or telephonic paging device telephone subscriber notifies the department of his or her desire to be placed on a “no sales solicitation calls” listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls, the department must place the

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<sup>57</sup> Farmers or groups of farmers in the sale of agricultural products grown by themselves.

<sup>58</sup> A fine not to exceed \$5,000 per violation.

subscriber on that listing for five years. No telephone solicitor can make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. The department is required to investigate any complaints received concerning violations.

*Effect of Proposed Changes*

The bill amends s. 501.059, F.S., to authorize the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the telephone solicitation law and the “no sales solicitation calls” listing.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 14-15	FY15-16
<b>General Inspection Trust Fund</b>		
Registration fees for seed distributors	\$ (13,725)	\$ (13,725)

2. Expenditures:

According to the department, costs incurred in providing training for oyster harvesters and processors can be absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill's revisions to the greenbelt statute may result in a negative fiscal impact on local government revenues by requiring property appraisers to maintain the agricultural classification for lands participating in a dispersed water storage program and requiring property appraisers to assess such lands as nonproductive agricultural lands. The Revenue Estimating Conference met on March 14, 2014, and estimated that the bill will reduce local property taxes by \$100,000 in FY 2014-2015 and future years.

2. Expenditures:

The bill imposes minimum mandatory terms of imprisonment for certain offenses relating to ch. 500, F.S., which could have an indeterminate, negative jail bed impact.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sections 379.361, 597.004, and 597.020, F.S., provide for persons applying for or renewing an Apalachicola Bay oyster harvesting license to participate in an educational seminar before the license may be issued. There is no cost to the applicants for the required seminar.

Sections 487.046, 487.047, 487.048, and 576.021, F.S., provide the public the opportunity to register for licensure on-line; thus, creating the potential for savings in the form of postage.

Section 576.041, F.S., no longer requires licensees for agricultural fertilizers to post with the department a surety bond or sign a certificate of deposit.

Section 578.08, F.S., establishes two new lower registration fees for distributors of small amounts of seed (\$10/year for annual sales under \$500 and \$25/year for annual sales under \$1,000). This will reduce the fees these small distributors will have to pay, resulting in lower costs. The department estimates that a savings will be recognized by approximately 200 seed dealers.

Section 581.091, F.S., simplifies the regulatory process for using Australian pines for windbreaks in commercial citrus groves. Nurseries wanting to obtain a permit to propagate Australian pines will continue the current process of submitting an application accompanied by a fee of \$200, adhering to permit requirements, and renewing the application and fee annually. Growers wanting to plant Australian pines for windbreaks must continue to submit an application accompanied by a fee not to exceed \$500 to receive a special permit valid for five years.

Section 583.01, F.S., increases the number of dressed birds that a small farm may sell per week, potentially increasing revenues for the farm.

#### D. FISCAL COMMENTS:

Sections 500.12(2); 500.165(3); 502.231(1)(b); 501.922(1)(a); 525.16(1)2.; 531.50(1)(b); 559.9355(1)(c) – Because fines in the Division of Food Safety and the Division of Consumer Services are being reduced to what the department actually collects, there is no fiscal impact.

Section 581.091, F.S. – Because the bill terminates the pilot program, which may increase the area where Australian pines can be planted, there is a potential indeterminate increase in revenues resulting from the potential increase in permit fees collected by the department. Currently, one citrus grower has a special permit for planting Australian pines and two nurseries have special permits to propagate Australian pines.