

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1310

INTRODUCER: Agriculture Committee and Senator Hutson

SUBJECT: Agriculture

DATE: February 29, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1310 modifies provisions in several areas within the Department of Agriculture and Consumer Services (DACS). Specifically the bill:

- Provides sole authority to the DACS to regulate the burning of agricultural crops on land classified as agricultural;
- Allows agricultural lands currently assessed at a de minimis value of up to \$50 per acre for property tax purposes due to participation in a state or federal eradication or quarantine program to be replanted and retain the de minimis value for a period of five years;
- Preempts regulatory authority for commercial feed and feedstuff to the DACS;
- Establishes specific penalties enforceable at the state level, including enhanced penalties under certain circumstances for persons knowingly dealing in any manner with plant pests, or introducing or releasing plant pests in this state without a special permit from the DACS;
- Authorizes the DACS to seek reimbursement for reasonable expenses incurred in its plant pest control or eradication program; and
- Allows livestock grazing on “conservation easements” if such activity is a current or historic use on the site and is conducted in accordance with best management practices adopted by the DACS.

On February 5, 2016, the Revenue Estimating Conference determined the bill will reduce local property tax receipts by \$.2 million on a recurring basis beginning in Fiscal Year 2018-2019. Additionally, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on state prison beds.

The bill provides an effective date of July 1, 2016.

## II. Present Situation:

### Burning of Agriculture Crops

Currently, authorization must be obtained from the Florida Forest Service of the Department of Agriculture and Consumer Services (DACS) to conduct noncertified burning, certified prescribed burning, or certified pile burning. Additionally, open burning authorization programs of local governments must be approved by the Florida Forest Service.<sup>1</sup> The Florida Forest Service regulates the burning of agricultural crops on land classified as agricultural pursuant to the authority of s. 590.125, F.S.<sup>2</sup> Further authority for exercise of this power can be found in ss. 590.02(1)(i) and 590.02(10)(a), F.S.

### Special Agricultural Land Assessment for Abandoned Citrus Groves

Section 193.461, F.S., allows properties used for bona fide agricultural purposes to be valued for property tax purposes based on their current agricultural use, rather than the highest and best use otherwise required.<sup>3</sup> Generally, tax assessments for qualifying agricultural lands are lower than tax assessments for other uses.

In 2000, the Legislature passed an expansive agricultural bill in response to the spread of citrus canker.<sup>4</sup> As part of the effort to quarantine infected citrus lands, the Legislature amended s. 193.461, F.S., to allow lands classified as agricultural for assessment purposes to be assessed at a de minimis value of up to \$50 per acre –below what even a typical agricultural assessment might be – if they participate in a state or federal eradication or quarantine program.<sup>5</sup> To participate, these lands must be cleared and remain fallow.<sup>6</sup> As long as they remain unplanted and are not converted to some other income-producing use, they retain the \$50 per acre assessment.

Some infected groves have been abandoned by the owner. The DACS has initiated a comprehensive Citrus Health Response Program (CHRP) to encourage the removal and destruction of abandoned citrus groves. The DACS has interpreted the \$50 per acre valuation to apply to lands in the CHRP program because it is a state eradication or quarantine program. However, the CHRP program is not specifically mentioned in the statute,<sup>7</sup> and some property appraisers are questioning whether current law allows this treatment.

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<sup>1</sup> Section 590.125(2), (3), (4), and (6), F.S.

<sup>2</sup> Department of Agriculture and Consumer Services (DACS), *Senate Bill 1310 Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Agriculture).

<sup>3</sup> FLA. CONST. art. VII, s. 4(a); *compare* s. 193.011(2), F.S., and s. 193.461, F.S.

<sup>4</sup> Chapter 2000-308, Laws of Fla.

<sup>5</sup> Chapter 2000-308, s. 3, Laws of Fla.

<sup>6</sup> Section 193.461(7), F.S.

<sup>7</sup> Florida Department of Agriculture and Consumer Services, *Citrus Health Response Program Update Abandoned Grove Initiative*, <http://freshfromflorida.s3.amazonaws.com/Media%2FFiles%2FPlant-Industry-Files%2FCHRP%2FCHRP+Update+Abandoned+Grove82015.pdf>

### **Commercial Feed and Feedstuff**

“Commercial feed” is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans.<sup>8</sup>

“Feedstuff” is 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>9</sup> The department has indicated that it, as well as local governments, are authorized to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards. At present, there is no regulation of animal feed and feedstuff through local ordinances. The federal Food and Drug Administration is currently promulgating regulations which would bring the manufacture and distribution of commercial livestock feed and ingredients to a standard of sanitation safe for both human handling and animal consumption through the Food Safety Modernization Act. The bill would clarify the department’s preemptive authority to regulate, inspect, sample, and analyze any commercial feed and feedstuff to eliminate potential duplication of regulation. This is supported by the Florida Feed Association.

### **Penalties for Certain Handling of Plant Pests**

Laws covering the plant industry are covered in ch. 581, F.S. The powers, duties, and jurisdiction over the plant industry are enforced and under the control of the Division of Plant Industry within the Department of Agriculture and Consumer Services (DACS). The introduction of plant pests is prohibited except under special permit issued by the Division of Plant Industry, which is the sole issuing agency for such special permits.<sup>10</sup> In general, any violation of ch. 581, F.S., subjects the violator to being charged with a first degree misdemeanor and a fine up to \$5,000. An eradication program to combat an invasive plant pest, such as the Giant African Land Snail, has caused the DACS to expend \$11.5 million over four years.<sup>11</sup> There is no provision in Florida Statutes to recover this type of costs.

### **Conservation Easement**

A conservation easement is a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural or wooded condition.<sup>12</sup> Conservation easements are meant to retain areas as suitable habitat for fish, plants or wildlife or to retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance. The purpose of a conservation easement is accomplished by restricting the amount of development allowed on a piece of property, limiting other land uses, and maintaining existing areas of conservation interest on a piece of property in their natural condition.

Many conservation easements are required as a part of the conditions of regulatory permits. Other conservation easements are held by non-profit land trusts, usually obtained by donation from landowners who benefit from various local, state and federal tax deductions. Additionally,

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<sup>8</sup> Section 580.031(2), F.S.

<sup>9</sup> Section 580.031(10), F.S.

<sup>10</sup> Section 581.083(1), F.S.

<sup>11</sup> DACS, *Senate Bill 1310 Analysis*.

<sup>12</sup> Section 704.06, F.S.

in Florida conservation easements can be purchased from landowners by state, water management districts, and local conservation land acquisition programs.

Conservation easements are fundamentally different from conservation lands that the state owns in fee-simple. First, the landowner retains title to the land and only gives up certain rights that he or she would otherwise have on the property. The landowner, not the state, continues to manage the land subject to restrictions.<sup>13</sup> Landowners who have managed their lands for silvicultural resources, wetland protection, pasture for cattle grazing, or for hunting can continue to do so under a conservation easement. However, a landowner would not be allowed to revert back to historic uses to justify cattle grazing if it was not being presently used for that purpose.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3162, F.S., to provide the sole authority to the DACS to regulate the burning of agricultural crops on land classified as agricultural pursuant to s. 193.461, F.S.

**Section 2** amends s. 193.461, F.S., to specifically name the CHRP program as a program that qualifies for the \$50 per acre assessment for agricultural lands that are taken out of production in participation with a federal or state eradication or quarantine program. The bill amends the program to apply the \$50 per acre assessment for five years after the owner executes a compliance agreement with the administering program. The bill also allows participating lands to be replanted with citrus and continue to receive the \$50 per acre assessment for five years.

**Section 3** creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to the DACS in order to eliminate duplication of regulation.

**Section 4** amends s. 581.211, F.S., to provide penalties for persons:

- Knowingly dealing in any manner with plant pests, or introducing or releasing plant pests in this state without a special permit from the Division of Plant Industry within the DACS. Violators:
  - Commit a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
  - Are subject to an administrative fine pursuant to s. 570.091, F.S., in the Class II category (up to \$5,000).
  - May have a certificate of registration or a certificate of inspection suspended or revoked.
  - May be liable for payment of all reasonable costs and expenses incurred by the DACS which moneys shall be deposited into the Plant Industry Trust Fund.
- Conducting themselves in such a manner that results in the declaration of an agricultural emergency by the Commissioner of Agriculture or the implementation of a control or eradication program by DACS or the United States Department of Agriculture. Violators:
  - Commit a felony of the second degree if there has been a declaration of an agricultural emergency by the Commissioner of Agriculture or the implementation of a control or eradication program by the DACS or the United States Department of Agriculture.

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<sup>13</sup> Florida Department of Environmental Protection, *The Division of State Lands Conservation Easement Program*, [https://www.dep.state.fl.us/lands/files/ConservationEasement\\_WhitePaper.pdf](https://www.dep.state.fl.us/lands/files/ConservationEasement_WhitePaper.pdf).

- Are subject to an administrative fine pursuant to s. 570.091, F.S. in the Class IV category (up to \$10,000).
- May have a certificate of registration or certificate of inspection suspended or revoked.
- May be liable for payment of all reasonable costs and expenses incurred by the DACS which must be deposited in the Plant Industry Trust Fund.

**Section 5** amends s. 704.06, F.S., to revise the definition of “conservation easement” to provide that a permitted use of an agricultural condition may include livestock grazing if the activity is a current or historic use of the land, on the condition that future livestock grazing is done in accordance with Best Management Practices (BMPs) adopted by the DACS.

**Section 6** provides that this bill takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

See Government Sector Impact.

B. Private Sector Impact:

CS/SB 1310 may have an indeterminate negative fiscal impact on persons knowingly dealing in any manner with plant pests, or introducing or releasing plant pests in this state without a special permit from the DACS. Such individuals may be subjected to increased fines and penalties.

The bill may have an indeterminate positive fiscal impact on land owners who participate in an eradication or quarantine program by allowing them to retain their agricultural lands classification pursuant to a compliance agreement.

C. Government Sector Impact:

The bill amends the greenbelt law to allow citrus lands to retain agricultural classification for five years after execution of a compliance agreement, and requires property tax collectors to assess the lands at a de minimis value during the five-year term of the

agreement when such lands have been replanted. On February 5, 2016, the Revenue Estimating Conference determined the provisions in this bill related to agricultural land classification will reduce local property tax receipts by \$.2 million on a recurring basis beginning in Fiscal Year 2018-2019.

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, met on January 29, 2016, and estimated this bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3162, 193.461, 581.211, and 704.06.

This bill creates section 580.0365 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Agriculture on January 19, 2016:**

The committee substitute:

- Provides that citrus lands taken out of production pursuant to a state or federal eradication or quarantine program, including the Citrus Health Response Program (CHRP), shall continue to be classified as agricultural land and appraised at a de minimis value of \$50 per acre during the 5-year term of the agreement.
- Modifies the meaning of “conservation easement” to provide that a permitted use of an agricultural condition may include livestock grazing if the activity is a current or historic use of the land; it further requires future livestock grazing be in compliance with BMPs adopted by the DACS.

**B. Amendments:**

None.