

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 749 Agriculture

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture and Natural Resources Subcommittee and Raburn

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 0 N, As CS	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	Lolley	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Agricultural Lands Classification

Florida's "greenbelt law" allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. The bill amends the greenbelt law to identify the Citrus Health Response Program as a state or federal eradication or quarantine program; allow land to retain its agricultural classification for 5 years after execution of a compliance agreement; and require property tax collectors to assess the lands at a de minimis value during the 5-year term of the agreement, when such lands have been replanted in citrus pursuant to a compliance agreement.

Commercial Feed and Feedstuff Preemption

"Commercial feed" is all materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans. "Feedstuff" is edible materials that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet. The Department of Agriculture and Consumer Services (DACS) regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards. The bill preempts local governments from regulating commercial feed and feedstuff.

Penalties for Introduction of Plant Pests

The introduction into or release into the state of any plant pest, noxious weed, genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state is prohibited except under special permit issued by DACS. Individuals who violate this provision commit a first degree misdemeanor and are subject to an administrative fine. The bill adds additional penalties for individuals who *knowingly* acquire, import, possess, sell or offer to sell, trade or offer to trade, barter or offer to barter, move or cause to be moved, introduce, or release a plant pest without a special permit from DACS. Specifically, the bill provides that violators are liable for all reasonable costs and expenses incurred by DACS in a plant pest control or eradication program, and subject to increased administrative and criminal penalties.

Conservation Easements

A "conservation easement" is a perpetual, undivided right or interest in real property used to retain land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retain such areas as suitable habitat for fish, plants, or wildlife; retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintain existing land uses. The bill adds that conservation easements may prohibit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes, and may allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land and the future grazing is conducted in accordance with applicable best management practices.

The bill appears to have an indeterminate fiscal impact on the state, an insignificant negative fiscal impact on local government, and an indeterminate fiscal impact on the private sector. See the Fiscal Analysis & Economic Impact Statement for more details.

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

STORAGE NAME: h0749c.ANRAS

DATE: 2/9/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agricultural Land Classification

Present Situation

Section 193.461, F.S., also known as Florida's "greenbelt law," allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. In response to the spread of citrus canker, the Legislature amended the greenbelt law to allow lands classified as agricultural for assessment purposes to retain their agricultural classification if the land is taken out of production by a state or federal eradication or quarantine program.¹ Property tax collectors may only assess these agricultural lands converted to fallow or otherwise nonincome producing, a de minimis value up to \$50 per acre on a single-year assessment.²

Effect of the Proposed Changes

The bill amends paragraph s. 193.461(7)(a), F.S., to identify the Citrus Health Response Program as a state or federal eradication or quarantine program. The bill allows land to retain its agricultural classification for 5 years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services (DACS) or a federal agency pursuant to such program. Lastly, the bill states that if the land retaining the agricultural classification is replanted as required by a compliance agreement, the property tax collector must continue to assess the land at a de minimis value of up to \$50 per acre, on a single-year assessment methodology. These changes are intended to incentivize removal of sources of citrus greening, provide consistency in the land classification, provide landowners time to determine the viability of replanting, and encourage the replanting of citrus.

Commercial Feed and Feedstuff Preemption

Present Situation

"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, except:

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.³

"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.⁴

DACS regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards.⁵ A distributor of commercial feed must obtain a master registration⁶ and place on file a copy of the label for each brand of feed to be distributed in Florida.⁷

¹ Chapter 2000-308, Laws of Fla.

² Section 193.461(7)(a), F.S.

³ Section 580.031(2), F.S.

⁴ Section 580.031(10), F.S.

⁵ Section 580.036, F.S.

⁶ Section 580.041, F.S.

⁷ Section 580.051, F.S.

Effect of Proposed Changes

The bill creates s. 580.0365, F.S., to preempt local governments from regulating commercial feed and feedstuff.

Penalties for Introduction of Plant Pests

Present Situation

The introduction into or release into the state of any plant pest,⁸ noxious weed,⁹ genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod, is prohibited except under special permit issued by DACS.¹⁰ Any individual who violates this provision commits a first degree misdemeanor which may be punished by a fine not to exceed \$1,000 or jail time not to exceed one year.¹¹ DACS may impose an administrative fine that may not exceed \$5,000.¹² In addition, DACS may place the violator on probation, or suspend or revoke the violator's registration or certificate, if appropriate.¹³

While DACS may impose specified administrative fines, DACS does not have authority to require a violator to pay for the costs associated with eradicating a plant pest or noxious weed. As an example of costs incurred by DACS eradicating an illegally imported species, DACS and the USDA have spent \$11.5 million over 4 years in an attempt to eradicate giant African land snails illegally introduced into Florida.¹⁴

Effect of the Proposed Changes

The bill adds subsection (4) to s. 581.211, F.S., to add an additional penalty associated with reasonable costs and expenses for a plant pest control or eradication program. Specifically, the bill provides that any person who *knowingly* acquires, imports, possesses, sells or offers to sell, trades or offers to trade, barter or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from the DACS:

- Commits a first degree misdemeanor, which is consistent with the current penalty;
- Is subject to an administrative fine not to exceed \$5,000, which is consistent with the current penalty;
- May have their certificate of registration or certificate of inspection suspended or revoked, which is consistent with the current penalty; and
- Is liable for the payment of all reasonable costs and expenses incurred by DACS in a pest control or eradication program, which is a new penalty.

Further, the bill adds subsection (5) to s. 581.211, F.S., to address incidents where the introduction of a plant pest causes DACS to issue a declaration of an agricultural emergency or implement an eradication program. The bill provides that any person who *knowingly* acquires, imports, possesses, sells or offers to sell, trades or offers to trade, barter or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS that results in the issuance of a declaration of an agricultural emergency by DACS or the implementation of a control or eradication program by DACS or the USDA:

⁸ The term "plant pest" means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products. Section 581.011(26), F.S.

⁹ The term "noxious weed" means any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on protected plant species protected. Section 581.011(19), F.S.

¹⁰ Section 581.083(1), F.S.

¹¹ Section 581.211(1), F.S.

¹² Section 581.211(3), F.S.

¹³ Id.

¹⁴ DACS, Agency Analysis of 2016 House Bill 749, p. 1 (January 5, 2016).

- Commits a second degree felony, punishable by up to 15 years in prison or up to a \$10,000 fine,¹⁵
- Is subject to an administrative fine of \$10,000 or more;
- May have their certificate of registration or certificate of inspection suspended or revoked; and
- Is liable for the payment of all reasonable costs and expenses incurred by DACS in a pest control or eradication program.

Conservation Easements

Present Situation

A conservation easement is a right or interest in real property used to:

- Retain land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retain such areas as suitable habitat for fish, plants, or wildlife;
- Retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintain existing land uses.¹⁶

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; and
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.¹⁷

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.¹⁸ These interests run with the land and are binding on all subsequent owners of the servient estate.¹⁹ They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.²⁰ Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement.²¹

Corporations and governmental bodies acquire conservation easements in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.²² Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources;

¹⁵ Sections 775.082 and 775.083, F.S.

¹⁶ Section 704.06(1), F.S.

¹⁷ Id.

¹⁸ Section 704.06(2), F.S.

¹⁹ Section 704.06(4), F.S.

²⁰ Section 704.06(5), F.S.

²¹ Section 704.06(7), F.S.

²² Section 704.06(2), F.S.

maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.²³

Land that is dedicated in perpetuity²⁴ for conservation purposes²⁵ and that is used exclusively for conservation purposes, is exempt from ad valorem taxation.²⁶ Additionally, land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial use²⁷ is exempt from ad valorem taxation up to 50 percent of the assessed value of the land.²⁸ If the allowed commercial use includes agriculture, the use must comply with the most recent best management practices adopted by DACS.²⁹

Effect of the Proposed Changes

The bill amends paragraph 704.06(1)(c) and (e), F.S., to add that conservation easements may prohibit or limit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes, and allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land to be placed under the conservation easement and requires that future livestock grazing within the conservation easement area is conducted in accordance with applicable best management practices adopted by the DACS.

B. SECTION DIRECTORY:

- Section 1. Amends s. 193.461, F.S., relating to agricultural lands classification and assessment.
- Section 2. Creates s. 580.0365, F.S., relating to preemption of regulatory authority over commercial feed and feedstuff.
- Section 3. Amends s. 581.211, F.S., relating to penalties for plant industry regulations.
- Section 4. Amends s. 704.06, F.S., relating to conservation easements.
- Section 5. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows the department to impose and collect increased fines from a person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS, as well as recover

²³ Section 704.06(3), F.S.

²⁴ “Dedicated in perpetuity” means the land is encumbered by an irrevocable, perpetual conservation easement. Section 196.26(1)(d), F.S.

²⁵ “Conservation purposes” means:

1. Serving a conservation purpose, as defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. s. 170(h); or
- 2.a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces;
- b. Retention of such lands as suitable habitat for fish, plants, or wildlife; or
- c. Retention of such lands’ natural value for water quality enhancement or water recharge. Section 196.26(1)(c), F.S.

²⁶ Section 196.26(2), F.S.

²⁷ “Allowed commercial uses” are commercial uses that are allowed by the conservation easement encumbering the land. Section 196.26(1)(a), F.S.

²⁸ Section 196.26(3), F.S.

²⁹ Section 196.26(7), F.S.

the costs incurred attempting to control or eradicate plant pests. The amount that may be collected is unknown.

2. Expenditures:

The bill specifies that a person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS that results in the declaration of an agricultural emergency or the implementation of a control or eradication program by DACS or the USDA commits a felony of the second degree. The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill amends the greenbelt law to allow land to retain its agricultural classification for 5 years after execution of a compliance agreement, and requires property tax collectors to assess the lands at a de minimis value during the 5-year term of the agreement when such lands have been replanted in citrus according to the compliance agreement. The Revenue Estimating Impact Conference met on February 5, 2016, and determined that there would be a recurring revenue loss of \$200,000 and an insignificant nonrecurring revenue loss in the aggregate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural Land Classification

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 when they replant their land pursuant to a compliance agreement.

Penalties for Introduction of Plant Pests

The bill may have an indeterminate negative fiscal impact on any person who knowingly acquires, imports, possesses, sells, offers to sell, trades, offers to trade, barter, offers to barter, moves, causes to be moved, introduces, or releases a plant pest, without a special permit from DACS. Such individuals may face increased administrative and criminal penalties and fines, as well as be liable for costs incurred by DACS to control or eradicate the plant pest.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill, by allowing land to retain its agricultural classification in certain circumstances, may reduce local government's authority to raise revenue. However, an exemption to the mandates provision appears to apply because the provision will likely have an insignificant impact on the counties. The Revenue Estimating Impact Conference met on February 5, 2016, and determined that there would be a recurring revenue loss of \$200,000 and an insignificant nonrecurring revenue loss in the aggregate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Agriculture and Natural Resources Subcommittee adopted two amendments and reported the bill favorably with committee substitute. The amendments:

- Removed from the bill changes to s. 163.3162, F.S., relating to the regulation of burning agricultural crops;
- Amended paragraph s. 193.461(7)(a), F.S., to:
 - Identify the Citrus Health Response Program as a state or federal eradication or quarantine program;
 - Allow land to retain its agricultural classification for 5 years after the date of execution of a compliance agreement between the landowner and DACS or a federal agency pursuant to such program; and
 - Require property tax collectors to continue to assess the lands retaining their agricultural classification at a de minimis value of up to \$50 per acre, on a single-year assessment methodology, while such lands are fallow or otherwise nonincome-producing. Lands that have been replanted pursuant to a compliance agreement must continue to be classified as agricultural lands and assessed at a de minimis value during the 5-year term of the agreement; and
- Amended s. 704.06, F.S., to add that conservation easements may prohibit or limit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes and may allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land to be placed under the conservation easement and require that future livestock grazing within the conservation easement area is conducted in accordance with applicable best management practices adopted by the DACS.

This analysis is drawn to the committee substitute.