

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 18, 1998 Revised: 03/24/98 _____

Subject: Eradication of Agricultural Pests

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Williams</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/2 amendments</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 926 requires the Department of Agriculture and Consumer Services (DACS) and the Department of Health (DOH) to perform certain duties when DACS is carrying out an emergency response to a plant pest infestation which involves the aerial application of a pesticide to an urbanized area.

The bill has an effective date of July 1, 1998.

The bill creates 7 undesignated sections of law.

II. Present Situation:

Under s. 570.07, F.S., the Department of Agriculture and Consumer Services has the power to declare an emergency in any matter pertaining to agriculture, and to promulgate rules and issue orders which will be effective during the emergency. However, there are no specific state or federal statutes that require notification of the public before pest eradication begins.

Since 1995, the Department of Agriculture and Consumer Services, Division of Plant Industry, in conjunction with the United States Department of Agriculture (USDA), has maintained a permanent Fruit Fly Detection Program throughout Florida. More than 17,000 traps are distributed strategically throughout the state and are serviced regularly to check for fruit flies. When one or more flies are trapped in an area, a survey is implemented to establish the boundaries of the problem.

After an infestation such as the Mediterranean Fruit Fly is determined to exist, the Commissioner of Agriculture declares an Emergency Proclamation to immediately begin the necessary steps in

the eradication program. A site specific Environmental Assessment is performed by the United States Department of Agriculture/Animal and Plant Health Inspection Service (USDA/APHIS). If a Finding of No Significant Impact is issued, the Commissioner proceeds with the eradication.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires that any pesticide sold or distributed in the United States must first be registered with the Environmental Protection Agency (EPA). This aspect of the registration process requires that information be provided for analyses of hazards to people, water, animals, and a variety of other factors in this multifaceted registration process.

Applicants that are attempting to seek registration of their pesticide do so for a certain specific set of use patterns, e.g., for commercial use only. If a certain pesticide was not registered for a use that a state or federal agency wishes to employ, then that state or federal agency must receive an exemption from EPA under section 18 of FIFRA. Section 18 of FIFRA authorizes EPA to exempt a state or federal agency from the provisions of FIFRA if EPA determines that emergency pest conditions exist.

As part of the section 18 exemption, DACS must comply with federal guidelines in its use of a pesticide. These guidelines provide that:

- All applicable environmental laws and regulations will be followed;
- All program personnel will be instructed on procedure and proper use of equipment and materials;
- All materials will be used, handled, stored and disposed of according to applicable laws to minimize potential impacts to human health and the environment;
- All applications will be made and timed in such a manner as to avoid potential impact to the public and to non-target organisms, including endangered and threatened species; and
- Environmental monitoring be coordinated with federal, state and county personnel, including monitoring of the environmental fate of program chemicals, identification of adverse effects on public health and wildlife, as well as monitoring of quality assurance and control of environmental monitoring activities.

III. Effect of Proposed Changes:

This bill requires DACS and DOH to perform certain duties when DACS is conducting an emergency response to a plant pest infestation which involves the aerial application of a pesticide to an urbanized area.

Section 1. Requires DACS to use a pesticide previously approved by the United States Environmental Protection Agency (EPA) for that eradication purpose. The DACS must also disseminate information about the pest, the pesticide, any generally accepted effects of the pesticide on humans and the environment, recommended safety precautions, and any alternative methods available to respond to the pest infestation.

Section 2. Requires DOH to monitor complaints made to physicians and health care facilities about health problems resulting from chemical exposure. The DOH is to provide a toll-free hotline to receive complaints and is to record all calls received. The DACS, in consultation with DOH, is to adopt by rule standards for determining when the use of a particular pesticide should be discontinued.

Section 3. Requires DACS to notify the public in the area in which the pesticide is to be applied at least 96 hours before beginning the aerial application. The DACS is to use reasonable methods to disseminate the information as widely as possible. The notice is to include, but not be limited to:

- A copy of any EPA or other permit under which the pesticide will be applied;
- The source, including date of publication, of any available technical information about the pesticide;
- The projected area over which the pesticide will be applied; and
- The number of DOH's toll-free hotline

The DACS is to also notify the public when the response continues for more than a week and when the response is terminated.

Section 4. Requires DOH to provide physicians and health care facilities in the affected area with technical assistance relating to health problems that result from chemical exposure, and to provide the names, addresses and telephone numbers of physicians and health care facilities that specialize in health problems relating to chemical exposure.

Section 5. Requires DOH to provide technical assistance to DACS, and to establish a health advisory committee consisting of seven members:

- The State Health Officer;
- The local health officer;
- The poison information center director;
- A toxicologist from the Department of Agriculture and Consumer Services;
- A person representing the state teaching hospital;
- A physician practicing in the area; and
- An epidemiologist from the Department of Health.

The health advisory committee is to serve as a resource to DOH and DACS in carrying out their respective duties. The committee's duties include, but are not limited to, reviewing aggregate information from physicians and hotline calls.

Section 6. Requires the Commissioner of Agriculture to notify the Governor and the Cabinet of the same information at the same time as the department provides notice to the public as required by Section 3. Notification is also required when the response is conducted over a period longer than 1 week and when the response is terminated.

Section 7. Defines “urbanized area” as land that is zoned for purposes other than agriculture and that has a residential density of two or more units per acre.

Section 8. Provides an effective date of July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

In order to carry out its functions as described in this bill, DACS has estimated its operating costs as follows:

ESTIMATED FISCAL IMPACT
ON DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

	Amount Year 1 (FY 98-99)	Amount Year 2 (FY 99-00)	Amount Year 3 (FY 00-01)
Non-Recurring Costs (Start-Up Costs)	6,380	-0-	-0-
Recurring or Annualized Costs	59,614	61,091	62,612
Totals	<u>\$65,994</u>	<u>\$61,091</u>	<u>\$62,612</u>

The DOH has indicated that the fiscal impact of the program on DOH cannot be accurately determined because the number or severity of the eradication programs that would occur in any given year cannot be predicted. The effort that would be needed to monitor health problems that might be related to the eradication program will vary with the area to be treated and the length of time the pesticides will be applied. The number of lines and personnel needed to operate the hotline would also vary with the size and duration of the eradication program.

In order to carry out its functions described in this bill, DOH has estimated its operating costs as follows:

ESTIMATED FISCAL IMPACT
ON DEPARTMENT OF HEALTH

	Amount Year 1	Amount Year 2
Non-Recurring Costs (Start-Up Costs)	7,132	-0-
Recurring or Annualized Costs:	54,336	74,070
Total	<u>\$61,468</u>	<u>\$74,070</u>

The DOH has also indicated that the fiscal impact on county health departments would vary with the size and duration of the eradication effort. For a large program similar to the state's 1997 Medfly eradication, substantial resources might be required by the county health departments for a relatively short period of time.

The total estimated fiscal impact for both departments combined is as follows:

**COMBINED ESTIMATED FISCAL IMPACT
ON DEPARTMENT OF HEALTH
AND DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

	Amount Year 1	Amount Year 2
Department of Agriculture and Consumer Services Costs	65,994	61,091
Department of Health Costs	61,468	74,070
Grand Totals	<u>\$127,462</u>	<u>\$135,161</u>

The Senate’s appropriations bill, Senate Bill 2500, First Engrossed, includes as proviso to Specific Appropriation 490, relating to DOH salaries and benefits, the following statement:

From funds in Specific Appropriation 490, one position and \$48,786 is to be designated for public health information dissemination and collection systems for future agricultural emergencies involving aerial spraying of pesticides or other chemicals over non-agricultural areas with zoned densities over one unit per acre.

VI. Technical Deficiencies:

Section 4 of the Committee Substitute specifies that DOH provide physician and health care facilities “with technical assistance relating to health problems that result from chemical exposure.” This implies that all aerial applications of pesticides have associated health problems. This is a disputed conclusion. A preferred statement would be to require “technical assistance relating to health problems that *may* result from chemical exposure.”

Section 5 of the Committee Substitute, in providing for a health advisory committee to provide advice to DACS, specifies as a member a person representing *the* state teaching hospital. The preferred reference would be to *a* teaching hospital representative.

VII. Related Issues:

Section 2 of the Committee Substitute directs DACS, in consultation with DOH, to “adopt by rule standards for determining when the use of a particular pesticide should be discontinued.” Given the recently modified Administrative Procedures Act, as specified in s. 120.536, F.S., rules must be based on specific, and not general, grants of rule making authority. The provision of the bill may need to be made more specific.

VIII. Amendments:

#1 by Health Care:

A technical amendment, referencing health problems that *may* result from chemical exposure.

#2 by Health Care:

A technical amendment, referencing inclusion of *a* representative of a state teaching hospital on the Department of Health's health advisory committee.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
