

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 981 Agriculture  
**SPONSOR(S):** General Government Policy Council, Natural Resources Appropriations Committee,  
Agriculture and Natural Resources Policy Committee, Grimsley  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Agriculture &amp; Natural Resources Policy Committee</u>	<u>10 Y, 0 N, As CS</u>	<u>Cunningham</u>	<u>Reese</u>
2)	<u>Natural Resources Appropriations Committee</u>	<u>9 Y, 0 N, As CS</u>	<u>Bellflower</u>	<u>Dixon</u>
3)	<u>General Government Policy Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Cunningham</u>	<u>Hamby</u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The bill states that land, classified as bona fide agricultural land, retains that classification when offered for sale if the land continues to be used primarily for bona fide agricultural purposes. The bill also states that the classification is to be remedial and clarifying and applied retroactively to all parcels for which a final court order has not been issued. The bill also provides that structures or improvements used for horticultural production that provide shade and shelter and improve the quality or conservation of water, as designated by the Department of Agriculture and Consumers Services' (DACs) interim measures or best management practices shall be assessed by the methodology required for the assessment of land used for agricultural purposes.

The bill provides the Department of Environmental Protection (DEP) with clear authority to develop and implement a general permit that will allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests. The Fish and Wildlife Conservation Commission (FWCC) and the DACs may enter into agreement with the DEP to ensure uniform regulation of pesticides applied to the waters of the state.

The bill provides that the Citrus Research and Development Foundation, Inc.<sup>1</sup> (foundation), a direct support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order. The foundation is responsible for providing advice on administering the order to the DACs, conducting citrus research, and performing duties assigned by the DACs. The foundation's board of trustees shall be composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture. The bill expands the types of research that may be conducted by the DACs.

The bill provides for the collection of agricultural assessments used to defray costs associated with marketing orders to be deposited in "the appropriate trust fund" rather than the General Inspection Trust Fund as required by current law. The bill replaces the one cent cap on assessment imposed on citrus fruit with a requirement that the rate not exceed the rate established by the marketing order.

According to the DACs, it will be necessary for the citrus industry to increase the assessment on the producers in order to generate additional funds for citrus research. In November 2009, the citrus industry voted in favor of the self-imposed assessment. If the rate is set at the maximum of three cents per box, approximately \$3,000,000 would be deposited into the appropriate trust fund.

There are pending cases in Nassau and Bradford counties that may be affected by the land classification provisions of this legislation. If the property appraisers lose these cases, the fiscal impact of this legislation may be significant to these counties. The fiscal impact on local government of the provisions relating to the assessment of agricultural improvements or structures used for horticultural production that provide shade and shelter and improve the quality or conservation of water has not been determined by the Revenue Estimating Conference.

The bill has an effective date of July 1, 2010.

<sup>1</sup> Established pursuant to s. 1004.28, F.S.

## HOUSE PRINCIPLES

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Land Classification***

The specific criteria used by a property appraiser to classify land as bona fide agricultural land or nonagricultural land is listed in s. 193.461, F.S. Currently, sale of land for a purchase price which is three or more times the agricultural assessment placed on the land creates a presumption that such land is not to be used primarily for bona fide agricultural purposes. The landowner may rebut by demonstrating that the land is to be continued in bona fide agriculture. In January 2008, the Circuit Court of the Eighth Judicial Circuit, in and for Bradford County, Florida, issued a Final Judgment that denied an agricultural classification to three parcels of land that had been purchased by a real estate company for more than three times the appraised agricultural value. The court held that the land was being used before and after the purchase for a bona fide agricultural purpose, a timber operation. However, since the primary purpose of the real estate company was the sale and marketing of land that has been identified as having a higher and better use, the court ruled that the bona fide agricultural practices were secondary to the primary purpose of marketing the land. The Florida Department of Agriculture and Consumer Services (DACs) filed an *Amicus Curiae*, in support of the landowner, citing that the courts have long recognized that actual use of the land at the time of assessment should be the deciding factor, rather than speculative intent to sell or develop in the future. In November 2009, the First District Court of Appeal affirmed the Circuit Court's decision by filing a *Per Curiam* Opinion.

The bill states that land classified as bona fide agricultural land, retains that classification when offered for sale if the land continues to be used primarily for bona fide agricultural purposes. The bill states that this provision is remedial and clarifying and applies retroactively to all parcels for which a final court order has not been issued. The bill also provides that structures or improvements that provide shade and shelter and improve the quality or conservation of water, as designated by the Department of Agriculture and Consumers Services' (DACs) interim measures or best management practices shall be assessed by the methodology required for the assessment of land used for agricultural purposes.

##### ***Pesticide Regulation***

In January 2009, the U.S. Sixth Circuit Court of Appeals (Cincinnati) ruled that Clean Water Act permits are required for all biological pesticide applications and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the United States. The U.S. Environmental Protection Agency (USEPA) was granted a stay of this decision that expires April 2011. In February 2010, the Supreme Court declined to grant a rehearing of this decision. Certain delegated states that do not have a general permit in place are authorized to develop their own

general permit in coordination with the USEPA. Therefore, after April 2011, pesticide applications necessary for aquatic weed control will be required to have a National Pollutant Discharge Elimination System (NPDES) permit before applications can be made. Failure to comply will be a violation of the Clean Water Act. Currently, the DACS is responsible for regulating pest control. USEPA delegates authority to DEP to enforce the provisions of the Clean Air Act.

The bill amends s. 403.088, F.S., providing the Department of Environmental Protection (DEP) with clear authority to develop and implement a general permit that will allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests. The Fish and Wildlife Conservation Commission (FWCC) and the DACS may enter into agreement with the DEP to ensure uniform regulation of pesticides applied to the waters of the state.

### ***Citrus Research***

Many challenges, from weather to disease, face Florida's citrus growers. Recent freezes in Florida cost Florida an estimated 7.4 million boxes of fruit. Huanglongbing (HLB), also known as citrus greening, was discovered in Florida in 2005 and can destroy existing groves and prevent commercial production of citrus cultivars. The general control strategy is to eradicate all existing sources and replant healthy trees<sup>2</sup>. Wind, accompanied with heavy rains, and potential saltwater flooding, can wreak havoc on citrus crops<sup>3</sup>. The hurricanes of 2004-05 (Charley, Frances, Ivan and Jeanne), led to a four-fold increase in monthly detection of citrus canker that lasted 12 months as a result of the windblown rain<sup>4</sup>. Citrus canker, often spread through wind and rain, causes lesions on the fruit, defoliation of the tree, shoot die-back, and fruit drop.

In November 1991, Florida citrus growers voted to enact a citrus research order that requires a grower referendum every six years. The order established a "box tax" to help support citrus research for all growers in the state. The citrus research order covers all citrus (except limes) in the state of Florida.<sup>5</sup>

In a December 2009 referendum, Florida citrus growers voted to continue funding a self-imposed tax, which was increased from a maximum of one cent per box to a maximum of three cents per box, to support additional citrus research<sup>6</sup>. Due to the magnitude and scope of duties and responsibilities related to the survival of the industry because of potential threats from various citrus pests and diseases, the industry recommended that a new organization be established in lieu of the Florida Citrus Production Research Advisory Council.

The bill provides that the Citrus Research and Development Foundation, Inc. (foundation), a direct support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order, and is responsible for:

- Providing advice on administering the order to the DACS;
- Conducting citrus research; and
- Performing duties assigned by the DACS.

The foundation's board of trustees is composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture.

The bill amends s. 573.118, F.S., to replace the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order.

---

<sup>2</sup> <http://edis.ifas.ufl.edu/pp133>

<sup>3</sup> <http://edis.ifas.ufl.edu/ch178>

<sup>4</sup> [http://www.ars.usda.gov/research/publications/publications.htm?SEQ\\_NO\\_115=186252](http://www.ars.usda.gov/research/publications/publications.htm?SEQ_NO_115=186252)

<sup>5</sup> <http://www.florida-agriculture.com/news/10-30-09.htm>

<sup>6</sup> <http://www.doacs.state.fl.us/press/2009/12092009.html>

Currently, s. 581.031, F.S., limits research projects to citrus diseases, including but not limited to citrus canker and citrus greening. The bill amends s. 581.031, F.S., by removing "citrus diseases," thereby expanding the types of research that may be conducted by the DACS to any research purpose within the limits of appropriations made specifically for such purpose.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 193.461, F.S., clarifying that land classified as agricultural retains that classification when offered for sale if the land continues to be used primarily for agricultural purposes and providing the methodology for assessing certain agricultural improvements, structures, or equipment located on agricultural land and used for specified purposes

Section 2. Amends s. 193.461, F.S., establishing that the language is remedial and clarifying and applies retroactively to all parcels for which a final court order has not been entered.

Section 3. Amends s. 369.20, F.S., providing that the Fish and Wildlife Conservation Commission may enter into agreement with the DEP to ensure uniform regulation of pesticides applied to the waters of the state.

Section 4. Amends s. 403.088, F.S., providing the DEP with clear authority to develop and implement a general permit that will allow application of pesticides for the control of insects, aquatic weeds, algae, or other pests.

Section 5. Amends s. 487.163, F.S., authorizing the DACS to enter into an agreement with the DEP to ensure the uniform regulation of pesticides applied to waters of the state.

Section 6. Amends s. 573.112, F.S., providing that the Citrus Research and Development Foundation provide advice to the DACS with respect to citrus research marketing orders, conduct citrus research, and perform other duties assigned by the DACS.

Section 7. Amends s. 573.118, F.S., providing for the deposit of certain agricultural assessments and revising the cap on the assessment rate on citrus fruit.

Section 8. Amends s. 581.031, F.S., expanding the type of research projects that may be conducted by the DACS.

Section 9. Establishing the location of the executive offices of the Department of Citrus in Bartow.

Section 10. Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill replaces the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order to be deposited in the appropriate trust fund and used by that entity. If the rate is set at the maximum of three cents per box, approximately \$3,000,000 would be deposited into the appropriate trust fund.

##### 2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Negative and indeterminate. See fiscal comments.

2. Expenditures:

None

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

According to the DACS, the citrus industry will have to increase the assessment to the producers in order to generate additional funds for citrus research. The industry voted, by a referendum conducted (November 16, 2009) for the self-imposed assessment. If the rate of assessment is fixed at the maximum rate established in the marketing order, it is estimated that the increase from one cent to three cents in the assessment cap would impact the citrus growers by approximately \$3,000,000 per year.

**D. FISCAL COMMENTS:**

There are pending cases in Nassau and Bradford counties that may be affected by this legislation. If property appraisers lose these cases, the fiscal impact of this legislation may be significant to these counties. The fiscal impact of the provisions relating to the assessment of agricultural improvements or structures used for horticultural production that provide shade and shelter and improve the quality or conservation of water has not been determined by the Revenue Estimating Conference.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandate provision may apply because the bill reduces the authority of the counties to raise revenues. It is not known whether the exemption for insignificant fiscal impact (\$1.9 million) is applicable because the magnitude of the impact cannot be determined at this time.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 9, 2010, the General Government and Policy Council adopted two amendments and passed the bill as a Committee Substitute.

Amendment 1 removes the reference to the Florida Administrative Code.

Amendment 2 further refines the types of structures or improvements that would be assessed using the income methodology. These structures are those recognized by the Department of Agriculture best management practices.

On March 26, 2010, the Natural Resources Appropriations Committee adopted three amendments and passed the bill as a Committee Substitute.

Amendment 1 provides that agricultural improvements, structures, or equipment on agricultural land used as a natural conservation or best management practices shall be assessed the same tax assessment as those already recognized for irrigation systems or waste containment structures of dairy or poultry farms.

Amendment 2 is technical in nature.

Amendment 3 allows necessary amounts of pesticides to be applied during the time periods that they are needed.

On March 11, 2010, the Agriculture and Natural Resources Policy Committee adopted four amendments and passed the bill as a Committee Substitute.

Amendment 1 amends s. 193.461, F.S., stating that land classified as agricultural retains that classification when offered for sale if the land continues to be used primarily for agricultural purposes. This amendment is remedial and clarifying and applied retroactively to all parcels for which a final court order has not been entered. This amendment also renames the bill, "Relating to Agriculture."

Amendment 2 establishes Bartow as the location for the executive office of the Department of Citrus.

Amendment 3 corrects the name from the Florida Citrus Research Production Advisory Council, to the Citrus Research and Development Foundation, Inc.

Amendment 4 amends s. 403.088, F.S., providing that the Fish and Wildlife Commission may enter into agreement with the Department of Environmental Protection to ensure uniform regulation of pesticides applied to the waters of the state.