

**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.)

Prepared By: The Professional Staff of the Agriculture Committee

**BILL:** CS/SB 2182

**INTRODUCER:** Agriculture Committee and Senator Alexander

**SUBJECT:** Agriculture

**DATE:** March 10, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	<b>Fav/CS</b>
2.	_____	_____	CA	_____
3.	_____	_____	FT	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill prohibits the denial of an agricultural classification on land if the only changed circumstance is that the land has been offered for sale and it applies this prohibition retroactively to all parcels for which a final court order has not been entered.

The bill gives authority for the Department of Environmental Protection (DEP) to enter into agreements with the Department of Agriculture and Consumer Services (DACCS) and the Fish and Wildlife Conservation Commission (FWCC) to develop a permitting process that will allow DEP to regulate pesticides applied to waters of the state in a way that satisfies the requirements of the National Pollutant Discharge Eliminations (NPDES) Program in accordance with the federal Clean Water Act.

The bill provides that a recently formed, direct-support organization of the University of Florida, the Citrus and Research Development Foundation, Inc., shall serve as the advisory council for a citrus research marketing order and it dictates the makeup of the board of directors for the foundation. It replaces the 1 cent per box assessment for citrus fruit with an assessment not to exceed the amount included in the marketing order and it requires the funds to be deposited into

the appropriate trust fund instead of the General Inspection Trust Fund. Language that limits research projects to citrus diseases is removed from the statutes.

This bill substantially amends the following sections of the Florida Statutes: 193.461, 369.20, 403.088, 487.163, 573.112, 573.118, and 581.031.

## II. Present Situation:

### Agricultural land offered for sale

Specific criteria are listed in s. 193.461(3)(b), F.S., that are to be considered by a property appraiser in determining whether land is being used for a bona fide agricultural purpose. One criterion is that a sale at three or more times the agricultural assessment creates a presumption that the land is not being used primarily for bona fide agricultural purposes. This presumption is rebuttable by a showing by the landowner that land is to be continued in bona fide agriculture. In January 2008, a Final Judgment was issued by the Circuit Court of the 8th Judicial Circuit in and for Bradford County, Florida that denied an agricultural classification for certain properties that had been transferred to a wholly-owned real estate company at an assigned value greater than 3 times the appraised value. The trial judge found that the land was used before and after the transfer for a bona fide commercial agricultural purpose (a timber operation). But the judge held that, because of the transfer to a real estate company, the primary purpose was the marketing of the land and that the agricultural use was secondary. Because of the significance of the agricultural classification to agriculture, the Florida Department of Agriculture and Consumer Services (department) filed an Amicus Curiae Brief in support of the landowner's appeal. That brief points out that courts have long recognized the public benefit from continued agricultural use of land and have held that the actual use of the property at the time of assessment should control rather than a speculative intent to sell or develop in the future. Despite the landowner's and the department's arguments, the First District Court of Appeal affirmed the Circuit Court's decision with a Per Curiam Opinion filed November 18, 2009. There is concern that this result has potential to set a precedent for agricultural assessment that could affect Florida agriculture beyond the particular circumstances of that case.

### Permit for application of pesticides to state waters

Until recently, the application of a pesticide to state waters did not constitute the discharge of a pollutant that required an NPDES permit if it was done to control pests such as mosquito larvae, adult mosquitoes, and aquatic weeds. In 2009, the U.S. Court of Appeals for the Sixth Circuit issued a decision that NPDES permits are required for all biological pesticide applications and chemical pesticide applications that leave a residue in federal waters, which includes most state waters. In February 2010, the U.S. Supreme Court declined to grant a rehearing of the appellate court's decision. Certain delegated states that don't have a general permit in place are authorized to develop their own general permits in coordination with the U.S. Environmental Protection Agency. As a delegated state, The Florida DEP is the agency that will issue the NPDES permits for Florida. If there is not a general permit program, each operator (such as a mosquito control district or an aquatic weed manager) will need an individual permit. Presently pest control in Florida is regulated by DACS and a change in the law is necessary to give DEP clear authority to develop and implement a general permit for application of pesticides for aquatic weed control and mosquito control.

Advisory council for a citrus research marketing order

The Florida Citrus Production Research Advisory Council (FCPRAC) has been performing research functions pursuant to a Florida Citrus Production Research Order since 1991. The FCPRAC receives funds generated from a box tax to help researchers solve industry production problems. Funds are awarded as competitive grants selected from proposals submitted by the research community to the FCPRAC each year. The citrus industry formed the Citrus Research and Development Foundation, Inc. in 2009 pursuant to s. 1004.28, F.S., as a direct-support organization of the University of Florida to assume responsibility for managing research projects aimed at solving diseases that threaten the citrus industry, the goal being to improve the overall research effort's efficiency as a single, focused corporation allied with the University of Florida.

Change in self-imposed assessment on citrus fruit

The FCPRAC has operated since 1991 under the Florida Citrus Production Research Order. This order was approved in referendums in 1991, 1997, and 2004. The order enacted regulations allowing growers to tax themselves up to 1 cent per standard-packed box of citrus fruit grown and placed in the primary channel of trade in this state. The box assessment has to be submitted to referendum of the growers every 6 years and, in 2009, the growers voted to increase the industry's self-imposed tax to a maximum of 3 cents per box. The department, after receiving the recommendations of the respective advisory council, has authority to fix the rate of assessment on agricultural commodities up to the amount permitted by statute for the purpose of raising funds to cover necessary expenses to administer and enforce the order.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 193.461, F.S., to:

- make technical, non-substantive changes to portions of the existing language, and
- provide that offering land for sale that has an agricultural classification may not be grounds to deny an agricultural classification if the land continues to be used primarily for agricultural purposes.

**Section 2** amends s. 193.461, F.S., to declare that the foregoing amendment regarding agricultural land offered for sale is intended to be remedial and clarifying and applied retroactively to all parcels for which a final court order has not been entered.

**Section 3** amends s. 369.20, F.S., to authorize the Fish and Wildlife Conservation Commission to enter into an agreement with the Department of Environmental Protection (DEP) to regulate pesticides applied to waters of the state through the implementation of permitting, compliance, and enforcement activities which conform to the requirements of Florida statutes for water pollution operation permits and the federally approved state National Pollutant Discharge Elimination (NPDES) Program. It incorporates the exemption provisions of s.403.0885, F.S.

**Section 4** amends s. 403.088, F.S., to provide that pesticides may be applied to state waters to control insects, aquatic weeds, algae, or other pests if any of the following circumstances exists:

- a person obtains a permit through a permit process developed by agreement between DEP and DACS that complies with 33 U.S.C. s. 1342 for the application of pesticides.

- DEP, in consultation with DACS and the Fish and Wildlife Conservation Commission (FWCC), develops a general permit for the application of pesticides that complies with the general permitting program under the Federal Clean Water Act.
- DEP enters into an agreement with DACS and FWCC to ensure the uniform regulation of pesticides applied to waters in the state. The bill provides that approved pesticides applied with a permit in accordance with controlling regulations are not subject to the acute toxicity provisions of Rule 62-302.500, Florida Administrative Code.

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

**Section 6** amends s. 573.112, F.S., to provide that the Citrus Research and Development Foundation, Inc., a direct-support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order to provide the department with advice on administering the order. It directs that the foundation's board of directors shall be composed of 13 members, including 10 citrus growers, 2 representatives of the university's Institute of Food and Agricultural Sciences, and 1 member appointed by the Commissioner of Agriculture.

**Section 7** amends s. 573.118, F.S., to:

- make technical, non-substantive changes to portions of the existing language,
- provide that the assessments collected on agricultural commodities be deposited into the appropriate trust fund rather than the General Inspection trust fund, and
- change the assessment of 1 cent per standard box of citrus fruit to an amount not to exceed the rate established in the marketing order.

**Section 8** amends s. 581.031, F.S., to:

- delete redundant language; and
- remove language that limits research projects to citrus diseases.

**Section 9** provides that the act shall take effect upon becoming a law.

#### **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:**

None.

**B. Private Sector Impact:**

If the department fixes the rate of assessment 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.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

A reference to the existing advisory council on lines 226 and 227 should be changed to reflect the new advisory council, the Citrus and Research Development Foundation, Inc.

**VII. Related Issues:**

None.

**VIII. 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 March 9, 2010:**

CS/SB 2182 differs from SB 2182 in that it provides authority for the DEP, in consultation and agreement with DACS and FWCC, to develop and implement a general permit program that will allow applications of pesticides to state waters for aquatic weed control and mosquito control purposes and it directs DEP to enter into agreements with DACS and FWCC to ensure uniform regulation of pesticides to waters of the state.

**B. Amendments:**

None.