

**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 General Government Appropriations Committee

BILL: CS/CS/CS/SB 2182

INTRODUCER: General Government Appropriations Committee, Community Affairs Committee, Agriculture Committee, and Senator Alexander

SUBJECT: Agriculture

DATE: April 13, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Gizzi</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Fournier</u>	<u>McKee</u>	<u>FT</u>	<u>Favorable</u>
4.	<u>Blizzard</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
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 applies this prohibition retroactively to all parcels for which a final court order has not been entered. The bill specifies an assessment methodology for structures or improvements used for horticulture production which provide shade and shelter and improve water quality or water conservation as designated by interim measures or best management practices.

The bill authorizes the Department of Environmental Protection (DEP) to enter into agreements with the Department of Agriculture and Consumer Services (DACS) and the Fish and Wildlife Conservation Commission (FWC) to develop a permitting process that allows the 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 the Citrus and Research Development Foundation, Inc., serve as the advisory council for a citrus research marketing order. The box assessment for citrus fruit shall not exceed the amount included in the order.

The bill requires the assessment placed on agricultural commodities be deposited into the appropriate trust fund rather than the General Inspection Trust Fund within the DACS.

The bill will have a positive impact on revenue available to the DACS to defray the costs incurred in the formulation, issuance, administration, and enforcement of citrus marketing orders. This bill will have a negative but indeterminate impact on local tax revenue.

This bill requires the DACS and representatives of the state pest control industry to prepare a report for the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the Senate Committee on Agriculture and the House Committee on Agribusiness by January 1, 2011. The report must include recommended changes pertaining to disciplinary action against licensees of the pest control industry. The report may also address additional issues of concern to the DACS and members of the industry.

The 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.

The bill creates an unnumbered provision in Florida law.

## II. Present Situation:

### Assessment of Agricultural Property

Pursuant to s. 4, Art. VII of the State Constitution, all agricultural land is assessed solely on the basis of its character or use.<sup>1</sup> For property to be classified as agricultural land, it must be used “primarily for bona fide agricultural purposes.”<sup>2</sup> Section 193.461(5), F.S., defines “agricultural purposes” to include, but is not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; all forms of farm products and farm production.<sup>3</sup>

Once property is qualified to receive agricultural classification, the property appraiser shall assess the land solely on its agricultural use utilizing the criteria provided in s. 193.461(6), F.S.<sup>4</sup> For purposes of the income methodology approach to the assessment of property used for agricultural purposes, irrigation systems, pumps, or motors physically attached to the land shall be considered part of the average yields per acre and shall have no separately assessable contributory value.<sup>5</sup>

### Agricultural Land Offered for Sale

Section 193.461, F.S., also provides specific events that require a property appraiser to reclassify agricultural land as nonagricultural.<sup>6</sup> A sale at three or more times the agricultural assessment

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<sup>1</sup> Art. VII, s. 4(a), of the Florida Constitution.

<sup>2</sup> Section 193.461(3)(b), F.S.

<sup>3</sup> Section 193.461(5), F.S.

<sup>4</sup> See ss. 193.461(6)(a)-(c), F.S.

<sup>5</sup> Section 193.461(6)(c)1., F.S.

<sup>6</sup> See ss. 193.461(3)(b)1.-7. and (4), F.S.

creates a presumption that the land is not being used primarily for bona fide agricultural purposes.<sup>7</sup> This presumption is rebuttable by a showing of special circumstances by the landowner demonstrating that the land will continue to be used in bona fide agriculture.<sup>8</sup>

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 three times the appraised value.<sup>9</sup> The trial judge found that the land was used before and after the transfer for a bona fide commercial agricultural purpose (a timber operation). However, the judge held that, because of the transfer to a real estate company, the primary purpose was the marketing of the land, that the agricultural use was secondary, and that the property appraiser was correct in denying the agricultural classification. The First District Court of Appeal affirmed the Circuit Court's decision with a Per Curiam Opinion filed November 18, 2009.<sup>10</sup> Agricultural classifications have been denied for these parcels for other tax years. In addition, parcels owned by the same development company in Nassau County have lost their agricultural classification and there are outstanding challenges to these denials.

### **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 as long as the application was conducted 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 held that NPDES permits were required for all biological pesticide applications and chemical pesticide applications that leave a residue in federal waters.<sup>11</sup> This includes most state waters. On February 22, 2010, the U.S. Supreme Court denied a petition for a writ of certiorari to review the appellate court's decision. Certain delegated states that do not have a general permit in place are authorized to develop their own general permits in coordination with the U.S. Environmental Protection Agency. Florida is a delegated state, and the DEP is the agency that issues 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 the DACS. A change in the law is necessary to give the DEP clear authority to develop and implement a general permit for application of pesticides for aquatic weed control and mosquito control.

### **Florida Citrus Production Research Marketing Order**

Section 573.103, F.S., defines a marketing order as a "an order issued by the DACS, prescribing rules governing the distributing, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods." Section 573.112, F.S., requires that the DACS, when issuing a marketing order, appoint an advisory council to advise the DACS in administering the order. The Florida Citrus Production Research Advisory Council (FCPRAC) has operated under the Florida Citrus Production Research Marketing Order (order) since issuance of the order by the DACS in 1991. The FCPRAC receives funds generated from a box

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<sup>7</sup> Section 193.461(4)(c), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Rayland L.L.C. v. Alvarez (as property appraiser of Bradford County Fla., No. 04-2005-CA-649 (Fla. 8th Cir. 2008).*

<sup>10</sup> *Rayland v. Alvarez, 23 So.3d 1187 (Fla. 1st DCA 2009).*

<sup>11</sup> *The National Cotton Council, et al., v. United States Environmental Protection Agency, 553 F.3d 927 (6th Cir.2009).*

tax on citrus 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.

In 2009, the citrus industry formed the Citrus Research and Development Foundation, Inc., as a direct-support organization of the University of Florida, pursuant to s. 1004.28, F.S. The foundation is responsible for managing research projects aimed at addressing diseases that threaten the citrus industry.

The DACS currently collects assessments to defray expenses incurred in the formulation, issuance, administration, and enforcement of any marketing order and deposits these funds into the General Inspection Trust Fund. Assessments relating to the citrus marketing order are deposited into the Citrus Inspection Trust Fund.

### **Change in Self-Imposed Assessment on Citrus Fruit**

The Florida Citrus Production Research Marketing Order, approved by citrus growers in referendums in 1991, 1997, and 2004, enacted regulations allowing growers to tax themselves up to one cent per standard-packed box of citrus fruit grown and placed in the primary channel of trade in Florida. The box assessment must be submitted to referendum of the growers every six years. In 2009, the growers voted to increase the industry's self-imposed tax to a maximum of three cents per box. The DACS, after receiving recommendations on the box assessment rate from the FCPRAC, has authority to set the rate up to the amount permitted by statute, for the purpose of raising funds to cover necessary expenses to administer the order. Section 573.118(6), F.S., limits assessments on citrus fruit to no more than one cent per box.

### **Pest Control Regulation**

The DACS regulates pest control businesses. Section 482.163, F.S., establishes that the proper performance of pest control activities by pest control business employees is the responsibility of the employee and the certified operator in charge. A licensee is not automatically responsible for violations of an employee. However, the licensee may not knowingly encourage, aid, or abet violations of the chapter.

## **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.
- 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.
- State that structures or improvements used for horticulture production which provide shade and shelter and improve water quality or water conservation as designated by interim measures or best management practices shall be assessed by the methodology described in s. 193.461(6)(c)1., F.S.

**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 applies 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 FWC to enter into an agreement with the DEP to regulate pesticides applied to waters of the state through the implementation of permitting, compliance, and enforcement activities which conform to statutory requirements for water pollution operation permits and the federally approved state National Pollutant Discharge Elimination 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 when the following prerequisites have been met.

- The DEP, in consultation with the DACS and the FWC, develops a general permit for the application of pesticides that complies with the general permitting program under the Federal Clean Water Act.
- The DEP enters into an agreement with the DACS and the FWC to ensure that uniform regulation of pesticides is applied to the waters in the state. The bill provides that approved pesticides applied with a permit in accordance with controlling regulations are allowed a temporary deviation from the acute toxicity provisions of DACS's water quality rule.
- A person obtains a permit through a permit process developed by agreement between the DEP and the DACS that complies with 33 U.S.C. s. 1342 for the application of pesticides.

**Section 5** amends s. 487.163, F.S., to authorize the DACS to enter into an agreement with the DEP to ensure that uniform regulation of pesticides is applied to the 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 DACS with advice on administering the order. It directs that the foundation's board of directors shall be composed of 13 members, including ten citrus growers, two representatives of the university's Institute of Food and Agricultural Sciences, and one 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 within the DACS.
- Change the assessment of one 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 language that limits research projects to citrus diseases.

**Section 9** requires the DACS and representatives of the state pest control industry to prepare a report for the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the Senate Committee on Agriculture and the House Committee on Agribusiness

by January 1, 2011. The report must include recommended changes to chapter 482, F.S., pertaining to disciplinary action against licensees who violate laws or rules pertaining to the pretreatment of soil to protect newly constructed homes; pest control at sensitive facilities, such as schools and nursing homes; and the fumigation of existing homes for protection against termite damage. The report may also address additional issues of concern to the DACS and members of the industry.

**Section 10** provides that the act shall take effect upon becoming a law.

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

##### **A. Municipality/County Mandates Restrictions:**

Section 18, Art. VII of the State Constitution provides that, except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

This bill does not appear to qualify for one of the exemptions provided in s. 18, Art. VII of the State Constitution and reduces the authority municipalities or counties have to raise revenues in the aggregate, the bill appears to fall under the mandate provisions of s. 18, Art. VII of the State Constitution and may require a two-thirds vote of the membership of each house of the Legislature.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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

##### **A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that the provision of this bill that states that offering property for sale does not constitute a primary use of land and may not be the basis for denying its agricultural classification, has a negative but indeterminate impact on local government revenue.

The Revenue Estimating Conference also determined that the increase in the assessment levied on citrus fruit will increase revenue to the Citrus Inspection Trust Fund by \$3.5 million annually.

The Revenue Estimating Conference has not determined the impact of assessing structures or improvements used for horticulture production which provide shade and

shelter and improve water quality or water conservation as designated by interim measures or best management practices by the methodology described in s. 193.461(6)(c)1., F.S.

**B. Private Sector Impact:**

Owners of property formerly classified as agricultural but being offered for sale may be able to retain their agricultural assessments under this bill, and owners of structures or improvements used for horticulture production which provide shade and shelter and improve water quality or water conservation as designated by interim measures or best management practices may be subject to lower property taxes.

If the DACS sets 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 \$3.5 million per year.<sup>12</sup>

**C. Government Sector Impact:**

The Revenue Estimating Conference has determined this bill will have a negative but indeterminate impact on local tax revenue. The bill will have a positive impact on revenue available to the DACS to defray the costs incurred in the formulation, issuance, administration, and enforcement of citrus marketing orders. There will be an estimated increase of \$3.5 million in the Citrus Inspection Trust Fund within the Department of Agriculture and Consumer Services. This bill has no fiscal impact on the General Inspection Trust Fund.

**VI. Technical Deficiencies:**

None.

**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 General Government Appropriations on April 13, 2010:**

This committee substitute:

- Clarifies the type and usage of structures or improvements that may be assessed by the methodology described in s. 193.461(6)(c)1, F.S.
- Authorizes the Department of Environmental Protection, in consultation and agreement with the Department of Agriculture and Consumer Services and the Fish and Wildlife Conservation Commission, to develop and implement a general permit

<sup>12</sup> Memorandum to Senate Committee on Agriculture from Craig Meyer, Florida Department of Agriculture and Consumer Services, *Deputy Commissioner* (March 2010).

program that will allow applications of pesticides to state waters for aquatic weed control and mosquito control purposes.

- Directs the DEP to enter into agreements with the DACS and the FWC to ensure uniform regulation of pesticides to waters of the state.
- Requires the DACS and representatives of the state pest control industry to prepare a report that includes recommended changes to chapter 482, F.S., pertaining to disciplinary action against licensees who violate laws or rules pertaining to the pretreatment of soil to protect newly constructed homes; pest control at sensitive facilities; and the fumigation of existing homes for protection against termite damage.

**CS by Community Affairs on March 17, 2010:**

- States that agricultural improvements, structures, or equipment on agricultural land used as a natural resource conservation practice or to implement state-adopted best management practices, shall be assessed by the methodology described in s. 193.461(6)(c)1., F.S.
- Deletes sections three through five of the CS relating to permits and uniform agreements for application of pesticides to state waters.
- Corrects the cross reference to the advisory council in s. 581.031, F.S., to read: the Citrus Research and Development Foundation, Inc.

**CS by Agriculture on March 9, 2010:**

The CS 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.

The CS also directs DEP to enter into agreements with DACS and FWCC to ensure uniform regulation of pesticides to waters of the state.

**B. Amendments:**

None.