

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 Community Affairs Committee

BILL: CS/CS/SB 382

INTRODUCER: Community Affairs Committee, Agriculture Committee, and Senator Dean

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Fav/CS
2.	Wolfgang	Yeatman	CA	Fav/CS
3.			HR	
4.			GA	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This committee substitute addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). It:

- Requires that the agricultural use of land present at the time of fee simple acquisition be given priority regarding the management of the land;
- Authorizes local governments to adopt more stringent standards for fertilizer usage than those contained in the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2009);
- Clarifies that a law enforcement officer can work as a security officer, but not as a security agency manager, without being regulated under ch. 493;
- Revises application procedures and requirements for a license to work in the private investigative, private security, and repossession services industries and updates the term “repossession” with “recovery agent;”
- Revises the membership of the Florida Food Safety and Food Defense Advisory Council;
- Specifies the quantity of antifreeze to be tested for registration;

- Adds terminal suppliers and importers to sellers of gasoline and oil required to submit an affidavit before doing business and imposes inspection fees on alternative fuel containing alcohol;
- Makes changes to laws regulating brake fluid sold in the state by adding definitions, revising registration procedure, providing a safe harbor for container labels, and changes procedures to be followed on the issuance of a stop-sale order;
- Changes language regarding liquefied petroleum gas qualifying examinations and increases the continuing education requirement from 12 hours to 16 hours. It increases the enforcement tools available to the department to regulate the sale of liquefied petroleum gas;
- Changes provisions for maintenance of public information for food banks;
- Deletes statutory references to an agricultural exposition center in Belle Glade, the Florida Agricultural Museum, and the Florida State Collection of Arthropods, all programs no longer the responsibility of the department;
- Provides for audits on marketing orders to be performed at the request of the advisory council associated with the marketing order;
- Allows the inspection and registration of sites in the natural environment where aquatic plants are tended for harvest;
- Increases the administrative fine cap for violations relating to plant industry;
- Deletes a requirement that containers or advertising display a poultry “grade;”
- Amends open burning laws to add “certified pile burner” as a new classification and provides guidelines for certified pile burning and certification procedures;
- Amends the Florida Farm Winery program to recognize the wine produced from agricultural products other than grapes;
- Exempts tropical foliage from the provisions of the License and Bond law;
- Clarifies that if a dealer in agricultural products fails, refuses or neglects to apply and qualify for a license renewal on or before its expiration date, a penalty shall apply;
- Provides optional ways for an amusement ride owner to satisfy a bond requirement and authorizes the department to issue stop-operation orders for failure to comply with laws or rules regulating fairs and amusement rides;
- Exempts sellers of travel from laws regulating sales representative contracts involving commissions;
- Allows an applicant for a license to carry a concealed weapon to submit fingerprints administered by the Division of Licensing;
- Repeals statutory sections that established the Florida Agricultural Exposition and the Florida Agricultural Museum;
- Makes sex with animals a first degree misdemeanor; and
- Requires the department and representatives of the Florida pest control industry to prepare a report that includes recommendations for changes in the law to provide for disciplinary action against licensees of the pest control industry who violate laws or rules.

This committee substitute amends sections 373.1391, 403.9336, 403.9337, 493.6102, 493.6105, 493.6106, 493.6107, 493.6108, 493.6111, 493.6113, 493.6115, 493.6118, 493.6121, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6401, 493.6402, 493.6406, 500.033, 501.605, 501.607, 501.913, 525.01, 525.09, 526.50, 526.51, 526.52, 526.53, 527.0201, 527.12, 559.805, 559.928, 570.0725, 570.53, 570.54, 570.55, 570.902, 570.903, 573.118, 581.011, 581.211,

583.13, 585.61, 590.125, 590.14, 599.004, 604.15, 604.19, 604.25, 616.242, 686.201, and 790.06 of the Florida Statutes. The committee substitute creates s. 828.126 of the Florida Statutes. This committee substitute repeals sections 570.071 and 570.901 of the Florida Statutes.

II. Present Situation:

Florida-Friendly Fertilizer Use on Urban Landscapes

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature in 2007 to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. The 2009 Legislature made findings¹ that the implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, which was developed by the department in conjunction with the Florida Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, will assist in protecting the quality of Florida's surface water and groundwater resources. Adoption by local governments that are located in an area where water is impaired by certain nutrients is required and local governments are allowed to adopt more stringent standards if needed through a "comprehensive program" which term is not defined or further explained.

Division of Licensing

The Division of Licensing has two primary responsibilities: regulation of private security, private investigative and recovery services, and issuance of licenses to carry concealed weapons or concealed firearms. Chapter 493, F.S., needs to be revised to reflect current terminology that conforms to federal regulations and current practice regarding requirements for a license or renewal of a license. The statutory language is not clear as to whether language referring to a law enforcement officer performing off-duty security activities is allowed to manage a security agency. Private investigator interns and security officers must complete 24 hours of training before submitting an application for a license and 16 hours post application. Currently agencies, but not training schools, can conduct activities under a fictitious name at different locations so long as they have a license for each location.

An applicant for a concealed weapon license must submit a set of fingerprints administered by a law enforcement agency even though the application is made to the Division of Licensing which has the capability to perform such a task.

The License fees and classifications are given in the department's rules:

PRIVATE INVESTIGATION

Agency	Class "A"
Private Investigator	Class "C"
Armed Private Investigator	Class "C" & "G"
Branch Office	Class "AA"
Manager	Class "C," "MA," or "M"
Intern	Class "CC"

¹ Chapter 2009-199, L.O.F.

PRIVATE SECURITY

Agency	Class "B"
Security Officer	Class "D"
Armed Security Officer	Class "D" & Class "G"
Branch Office	Class "BB"
Manager	Class "MB" or "M"

REPOSSESSION ACTIVITY

Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or "E"
Intern	Class "EE"

COMBINED PRIVATE INVESTIGATION AND SECURITY

Agency	Class "A" & "B"
Branch Office	Class "AB"
Manager	Class "M"

SCHOOLS

Security Officer School or Training Facility	Class "DS"
Security Officer Instructor	Class "DI"
Recovery Agent School or Training Facility	Class "RS"
Recovery Agent Instructor	Class "RI"

FIREARMS

Instructor	Class "K"
Statewide Firearm License	Class "G"

MANAGERS

Private Investigative Agency or Branch	Class "C," "MA," or "M"
Private Security Agency or Branch	Class "MB" or "M"
Recovery Agency or Branch	Class "E" or "MR"
Armed Manager	Manager's License and Class "G" ²

Florida Food Safety and Food Defense Advisory Council

The Florida Food Safety and Food Defense Advisory Council was created to serve as a forum for presenting, investigating, and evaluating issues of current importance to the assurance of a safe and secure food supply to the citizens of Florida. The council consists of, but is not limited to: the Commissioner of Agriculture or his or her designee; the State Surgeon General or his or her designee; the Secretary of Business and Professional Regulation or his or her designee; the person responsible for domestic security with the Department of Law Enforcement; members representing the production, processing, distribution, and sale of foods; consumers or members of citizens groups; representatives of food industry groups; scientists or other experts in aspects of food safety from state universities; representatives from local, state, and federal agencies that

² 5N-1.116, F.A.C.

are charged with responsibilities for food safety or food defense; the chairs of the Agriculture Committees of the Senate and the House of Representatives or their designees; and the chairs of the committees of the Senate and the House of Representatives with jurisdictional oversight of home defense issues or their designees. The council advises and makes recommendations on food safety or food defense issues in periodic reports to the Department of Agriculture and Consumer Services.

Social Security Numbers

Various applications for licenses and registrations have historically required disclosure of an individual's social security number. Examples include, but are not limited, to applications for commercial telephone seller, salesperson for a commercial telephone seller, seller or lessee of a business opportunity, independent agents that sell travel, and a handler of tropical or subtropical fruit and vegetables.

Antifreeze Act of 1978

Section 501.913, F.S., provides guidance for the registration of antifreeze products in this state. Specifically, it requires that a properly labeled sample of antifreeze be furnished to the department for testing prior to the issuance of a permit. Specific sample volumes are required to perform the necessary testing, but are not stipulated in current language. According to the department, adequate sample volumes are not always received. Conversely, samples sold in bulk quantities are sometimes received in larger than necessary quantities which require disposal.

Gasoline and Oil Inspection

Fees are charged by the department to defray expenses incident to inspecting, testing and analyzing specified petroleum fuels.³ According to DACS, all gasoline sold in Florida after December 31, 2010, will be required to contain 9-10 percent ethanol. Further, the presence of E85 (85 percent ethanol and 15 percent gasoline) is gaining a lot of attention in Florida, for use in Flex Fuel Vehicles. Although E85 does not have a large presence at this time, it is anticipated by the department to increase in volume in the near future. Pursuant to s. 525.02, F.S., the department is required to collect and analyze petroleum fuel samples from all fuel sold, offered or exposed for sale in Florida, which includes the ethanol, before it has been blended with gasoline to create ten percent blends or E85. Inspection, testing and analysis of these fuels must now be conducted to continue to protect consumers purchasing these fuels. As a result of these fuels entering Florida's motor fuel marketplace, the department's Bureau of Petroleum Inspection has modified its field inspection and expanded laboratory testing procedures and equipment to accommodate fuel quality and measurement standards pertaining to the presence of ethanol blended fuels. However, fuels containing ethanol are currently not subject to the petroleum inspection fee, although costs continue to be incurred relating to the inspection, sampling, and analysis of such fuels.

Sale of Brake Fluid

Businesses must meet certain requirements in order to register or renew registration of brake fluid products to sell and distribute brake fluid products in Florida. Currently, there is a registration fee of \$100 and a fee of \$50 for renewal of such products. However, according to the department, the cost to the department for renewing the registration compared to the first-time

³ Section 525.01, F.S.

registration of such products is estimated to be identical per brand/formula combination. Additionally, the fees (\$50 per brand/formula combination renewal) collected with renewal applications are insufficient to cover the costs of materials, labor, and analysis to register the products to be renewed.

The department currently can only issue a brake fluid stop-sale order at the location where a violation is found. If a product quality violation is found, brake fluid from the same “lot” may be available to consumers at other locations, different from where the violation was found. As a result, this product would still be able to be sold and not subject to stop-sale order by the department. This subjects consumers to substandard brake fluid products and prohibits the department from stopping the sale of known substandard product. Removal of language restricting the issuance of a stop sale order to a specific location would allow for the department to adequately protect consumers by stopping the sale of lots of brake fluid products known to be substandard.

Sale of Liquefied Petroleum Gas

The Division of Standards licenses, inspects and conducts investigations for the storage, transportation, distribution, and use of liquid petroleum gas. Section 527.12, F.S., provides the authority for the department to issue cease and desist orders and to assess civil penalties, but it does not authorize the department to issue a stop-use order, stop-operation order, or stop-sale order when a person, liquefied petroleum gas system, storage facility or any part or component thereof fails to comply with the requirements of this law or department rules. There are many potential violations of this public safety law which do not meet the criteria (an immediate serious danger to public health, safety and welfare) for an immediate final order. In order to properly regulate this area and protect the public interest, the department needs the authority to issue stop-operation orders in those instances where a violation occurs that does not rise to the level of an immediate serious danger.

Food Recovery Programs

Section 525.09, F.S., requires DACS to develop a public information brochure detailing the need for and benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs, and the food recovery programs or food banks that exist in the state. This brochure is required to be updated annually. The department states that an accurate publication is not feasible because the department does not have access to information regarding food recovery entities or food banks operating in the state unless they currently contract with the department. The department does not have rule making authority to require organizations to provide updated information to the department.

Direct Support Organizations

The Legislature has authority⁴ to establish direct-support organizations to provide assistance for the museums, the Florida Agriculture in the Classroom Program, the Florida State Collection of Arthropods, the Friends of the Florida State Forests Program of the Division of Forestry, and the Forestry Arson Alert Program, and other programs of the department. The Florida Agricultural Exposition has not been operational for years due to the profile change in inmates of the Martin

⁴ Section 570.903, F.S.

Correctional Institute and budget cuts and the department is no longer involved in supporting the Florida Agricultural Museum or the Florida State Collection of Arthropods.

Agricultural Marketing Orders

Section 573.118, F.S., gives the department authority to prescribe an assessment to provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order regarding agricultural commodities within this state. It also requires the department to cause an annual audit by a certified public accountant of the accounts in which the assessment funds are placed.

Plant Industry

In 2008, the department assumed responsibility for the regulation of aquatic plants through the Division of Plant Industry, including harvesting, distribution, and sale.⁵ The current definition of “nursery” in s. 581.011(20), F.S., excludes aquatic plants harvested from the natural environment. Including aquatic plants would allow for the identification, inspection, and registration of sites in the natural environment where aquatic plants are tended for harvest. Monitoring of these sites would assure that over-collection does not occur or otherwise damage the ecosystem in which the aquatic plants thrive.

The department may, after notice and hearing, impose an administrative fine not exceeding \$5,000 for each violation of ch. 581, F.S.⁶ The fine cap has not been raised for 30 or more years and is no longer commensurate with the damage that can result to agriculture or the environment. A nursery who unlawfully sells nursery stock under quarantine for an exotic pest can result in a new pest species being quickly distributed throughout the state, making eradication unfeasible and management very costly. If fines are capped at \$5,000 for an infraction, the amount to be gained from selling the plants may far outweigh the monetary penalty. Increasing the cap to \$10,000 may help prevent the unlawful movement of infested plants or pest species.

Sale of Eggs and Poultry

Chapter 583, F.S., defines “dealer” as any person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or in excess of 100 pounds of dressed poultry in any one week. Section 583.09, F.S., requires dealers of eggs and poultry to obtain a permit issued by the department pursuant to s. 500.12, F.S. Revising the definition to base it on a head count of chickens would result in a decrease of the number of “dealers” who were subject to regulation by the department.

The department was advised by the Food Safety and Inspection Service of the United States Department of Agriculture that the labeling terms in s. 583.13, F.S., for grading poultry are expressly preempted by federal law and cannot be enforced for poultry products being offered for sale in Florida. Specifically, our statute is in violation of s. 8(c) 21 U.S.C. 457(c) and s. 23 U.S.C. 467(e), the Poultry Products Inspection Act (PPIA). USDA’s letter states:

⁵ See s. 369.25, F.S., and ss. 581.031(27), (28), and (29), F.S.

⁶ Section 581.211(3)(a)1., F.S.

These provisions explicitly prohibit States from imposing any labeling requirements for poultry products prepared at federally inspected establishments which are in addition to, or different from, those imposed under the Acts.

Section 583.13, F.S., requires poultry packed in containers to be clearly marked bearing a label showing a grade that "...may be expressed in the term "premium," "good," or "standard," or as the grade of another state or federal agency the standards of quality of which, by law, are equal to the standards of quality provided by this law and rules promulgated hereunder." Removal of any reference to "grade" will eliminate the disparity that currently exists between federal and state statutes.

Animal Disease Diagnostic Laboratories

The department's Division of Animal Industry maintains two animal disease diagnostic laboratories in Osceola County and Suwannee County. They provide scientific expertise in the detection and investigation of animal diseases. The Kissimmee Animal Disease Diagnostic Laboratory is a nationally accredited laboratory and one of 12 core National Animal Health Laboratory Network laboratories in the nation. It includes BSL3 and BSL2 laboratories that provide biosecurity levels for working on zoonotic disease agents of high concern.

Forest Protection

Section 590.02, F.S., authorizes the Division of Forestry (division) to conduct controlled burns to suppress or prevent wild fires. The division does not have the statutory authority to delegate its authority to issue open burning authorizations to local governments. Many local governments have the interest and ability to implement a burn authorization program with division guidance. Some counties are already issuing permits under their own authority, but the division is required to come behind and re-issue a daily authorization, because the division is not able to delegate this authority to the local government.

Section 590.125, F.S., does not provide for civil liability protection for the new Certified Pile Burner Program started in November 2006. The committee substitute would clarify that Certified Pile Burners are entitled to the same gross negligence standard for liability as Certified Prescribed Burn Managers. Section 590.125(2)(a)(5), F.S., does not specify who must be present on the burn site for authorized, noncertified burns. The types of broadcast burning included in the certified prescribed burn program are not listed in s. 590.125, F.S. The county tax collector, rather than the division, is responsible for sending notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

Additionally, there is no statutory provision providing consequences for the violation of division rules.

Florida Viticulture Policy Act

To qualify as a certified Florida Farm Winery, a winery must meet each of the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.

4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
5. Pay an annual application and registration fee of \$100.⁷

The Florida Farm Winery Program is limited to wineries that produce wine from grapes. Several Florida wine producers use fruits and vegetables to make wine. However, they are not eligible to be registered and certified by the department as a Florida Farm Winery.

Dealers in Agricultural Products

Under s. 604.15, F.S., tropical foliage falls within the definition of “agricultural products” and a dealer in agricultural products is required to obtain a license and post a bond. Section 604.19, F.S., prohibits persons, or officers of a corporation, whose license has been suspended or revoked for failure to comply with an order of the department from holding a responsible position with a licensee or until the order of the department has been fully complied with. Additionally, no person who has held a responsible position with a person, partnership, corporation or other business entity against whom the department has entered an administrative complaint or final order or whose license has been suspended or revoked for failure to comply with an order of the department could hold a responsible position with an agricultural dealer, licensed or otherwise, until the order of the department has been fully complied with. Pursuant to s. 604.25, F.S., the department may decline to grant a license or may suspend or revoke a license already granted if the applicant or licensee is employing such a person. According to the department, this is an attempt to close the door on those individuals who register a corporation for the purchasing of agricultural products and then shut it down to avoid licensure or enforcement only to register a new corporation and continue operating without a license.

An agricultural dealer must post a bond calculated as twice the dollar amount of the maximum transactions in the preceding 12-month period. The department reports that the bond requirement is both burdensome on some applicants and confusing.

In the 2005 Legislative Session, the term “agricultural products” was amended to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own products(s). Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry, and it has requested a reenactment of the exemption.

Safety Standards for Amusement Rides

An owner of an amusement ride must provide a certificate of insurance or a bond for each ride as one of the conditions that must be met in order to obtain an annual permit to operate. There is no provision allowing this requirement to be met by some other form of security.

The department does not have the authority to issue a stop-operation order to an owner or an amusement ride which does not comply with the requirements of ch. 616, F.S., or department

⁷ See s. 599.004, F.S., which establishes the Florida Farm Winery program within the Department of Agriculture and Consumer Services.

rules. There are many potential violations of this public safety law which do not meet the criteria (an immediate serious danger to public health, safety and welfare) for an immediate final order. In order to properly regulate this area and protect the public interest, the department needs the authority to issue stop-operation orders in those instances where a violation occurs that does not rise to the level of an immediate serious danger.

Sellers of Travel

Section 686.201, F.S., requires the agreement between a principal and any sales representative paid on a commission basis to be subject to a written contract signed by both parties. If the contract is not in writing and it is terminated, failure to pay the commission within 30 days makes the principal to an action liable for treble damages, attorney's fees, and costs.

In Florida's travel industry, travel packages, cruise vacations, time share units, and hotel rooms are routinely made available by providers, often via websites, to "sellers of travel" registered under Part XI of Chapter 550, F.S. The sellers of travel may then sell those services to the public. In such instances, the provider generally has no exclusive relationship with the seller of travel involved, so it may be burdensome and costly for a travel provider to enter into a separate written contract with every seller of travel who may decide to access the provider's travel offerings. Moreover, the travel industry has indicated that there is no confusion regarding commissions and payment terms because such conditions are routinely published by travel providers and made available to all sellers of travel.

Sex with Animals

Despite the efforts of prosecutors in the State of Florida, persons who are actually caught in the act of sexual intercourse with an animal cannot generally be charged with or convicted of a sex-related crime. There have been several recently reported incidents of the abuse of animals in this particular way.

Reported incidents in Florida include:

- In Leon County, in 2005, a man was convicted of a misdemeanor disorderly conduct charge for sexually battering his own guide dog.
- In April 2004, a Marion County man pled no contest to animal cruelty after his fiancée caught him sexually battering her 1-year-old female dog. The dog was physically injured in the process. The Sheriff's Office reports indicated that the man told deputies that this type of behavior had been a "life-long problem."⁸
- A West Palm Beach man was caught sexually battering a neighbor's dog in January 2004. The dog was alleged to have been yelping in pain. The man was charged with animal cruelty and indecent exposure. The perpetrator is a registered sex offender.
- A family's pregnant goat was sexually battered and asphyxiated in January 2008, in a small Panhandle town. Although there was a suspect in the case, prosecutors were unable to charge him in the mistreatment and death of the goat because DNA tests were inconclusive.⁹

⁸ Rick Cundiff, *Man gets probation, psychological testing for sex abuse of dog*, OCALA STAR-BANNER, Apr. 15, 2004, at <http://www.ocala.com/article/20040415/NEWS/204150320>.

⁹ Marc Caputo, *Beastly crime gives rise to unusual bill*, MIAMI HERALD, Jan. 4, 2008 (on file with the Senate Committee on Judiciary).

- Martin County Sheriff's deputies were called to investigate an animal in distress and found a man sexually battering a 4-month-old puppy. Reports indicate that when the deputy approached the man, she saw him in the act as the puppy whined and tried to break free.

Because there are no sex crime statutes in Florida that would seem to apply in cases like those mentioned above, law enforcement officers and prosecutors must charge defendants with far less serious crimes, such as disorderly conduct, or crimes that may not seem to reflect fully the circumstances of the case, such as indecent exposure. Also, because of the elements of animal cruelty offenses, these acts and behaviors cannot always be prosecuted as such. There must be evidence of injury or evidence of excessive or repeated infliction of pain to the animal in order to prove felony animal cruelty.¹⁰

In other states, situations like those set forth above have resulted in the passage of laws designed to more accurately capture these behaviors within the criminal law as the particularized crimes that they are. Georgia, Louisiana, Mississippi, North Carolina, Virginia, and South Carolina are among the states in the Southeast that have enacted felony bestiality statutes.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 373.1391, F.S., to require that the agricultural use of land present at the time of fee simple acquisition be given priority regarding the management of the land.

Section 2 amends s. 403.9336, F.S., to revise legislative findings regarding the implementation of the Department of Environmental Protection's Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes.

Section 3 amends s. 403.9337, F.S., to provide criteria for revision of the Model Ordinance for Florida-Friendly Use on Urban Landscapes (2009). It authorizes the Department of Environmental Protection to amend the model ordinance by order subject to challenge under chapter 120. Before adoption, the department must hold a public meeting and notify interested parties. The CS requires local governments to adopt the most recent version of model ordinance. It also provides the following criteria that may be included in a local government's comprehensive program in order to adopt additional or more stringent standards than the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes:

- Nonpoint source activities adopted pursuant to s. 403.067(7);
- Florida-friendly landscaping requirements provided in s. 373.185, F.S., adopted into the local government's development code; or
- The requirement for and enforcement of the implementation of low-impact development practices.

¹⁰ Section 828.12(2), F.S., is the felony animal cruelty statute. It states: "A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or both."

¹¹ See GA. CODE ANN. s. 16-6-6, LA. REV. STAT. ANN. s. 14:89, MISS. CODE ANN. s. 97-29-59, N.C. GEN. STAT. s. 14-177, VA. CODE ANN. s. 18.2-361, and S.C. CODE ANN. s. 16-15-120.

Local governments must document in the public record:

- the need for more stringent standards, and
- that it has requested and considered all relevant scientific information.

The CS specifies that local fertilizer ordinances do not prohibit commercial fertilizer application to urban landscapes.

The committee substitute provides that this section does not apply to the use of fertilizer on lands used for scientific research, such as urban stormwater, water quality, agronomic, or horticultural.

Section 4 amends s. 493.6102, F.S., to clarify that Chapter 493, Private Investigative, Private Security, and Repossession Services, does not apply to a law enforcement officer performing approved, off-duty activities as a security officer, which activities do not include management of a security agency.

Section 5 amends s. 493.6105, F.S., to revise the information that must be included on an application for private investigators, private security officers and recovery agents. It:

- Requires applicants to have their application verified under oath rather than notarized;
- Eliminates the requirement that the applicant provide a 5 year history of his residence addresses and occupations;
- Clarifies that a statement of convictions means “criminal” convictions and includes findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt;
- Requires only Class “D” (Security Officer) or Class “G” (statewide firearm license) applicants to provide a passport-type color photograph taken within the last 6 months; and
- Requires a Class “K” (Instructor License) applicant to provide confirmation that he is authorized to provide firearms instruction if he is relying on a Florida Criminal Justice Standards and Training Commission Firearms Instructor’s Certificate and it revises language regarding certificates issued by the National Rifle Association. It expands the reliance on a firearms instructor’s training certificate issued by the armed forces, a federal law enforcement academy, or an academy recognized by the Criminal Justice Standards and Training Commission.

Section 6 amends s. 493.6106, F.S., to revise citizenship requirements and documentation for a license to work in the private security, investigative, and recovery industries as follows:

- The applicant must be a permanent legal resident alien or have appropriate authorization from the U.S. Department of Homeland Security;
- A non U.S. citizen must submit proof of current employment authorization or proof of permanent alien residence status from the U.S. Bureau of Citizenship and Immigration Services;
- An applicant seeking a Class “G” (Statewide Firearms License) or “K” (Instructor License) license, must also submit proof that he has resided in the state of residence shown on the application for at least the prior 90 days;
- An applicant for an agency or school license who is not a U.S. citizen or permanent legal resident alien must submit sufficient proof from the U.S. Bureau of Citizenship and Immigration Services that he is lawfully in the United States and authorized to own and operate such a business;

- An applicant for a Class “G” (Statewide Firearms License) or “K” (Instructor License) license may not be prohibited from purchasing or possessing a firearm by any state or federal law; and
- A branch office, in addition to the agency office, is required to provide notice within 10 days of a change of physical location.

Section 7 amends s. 493.6107, F.S., to delete the requirement that the check in payment of certain fees be certified. It removes the Department of Agriculture and Consumer Services’ (department) discretion to specify how payment shall be made.

Section 8 amends s. 493.6108, F.S., to revise the procedures for determining an applicant’s eligibility when a legible set of fingerprints cannot be obtained. It deletes language referring to a Federal Bureau of Investigation criminal history record check. It also requires an investigation of the mental history of Class “K” (Instructor License) applicants.

Section 9 amends s. 493.6111, F.S., to add a requirement that a business operating a school regulated by this chapter must have prior written authorization from the department to conduct business under a fictitious name and is limited to one fictitious name per license.

Section 10 amends s. 493.6113, F.S., to authorize the department to send written notice of the expiration date of a license to the last known mailing address rather than a residence address. It deletes the requirement for a private investigative agency or a security agency to submit an insurance certification when renewing a license.

Section 11 amends s. 493.6115, F.S., to conform statutory cross-references.

Section 12 amends s. 493.6118, F.S., to allow the department to take disciplinary action against statewide firearms licensees and firearms instructor licensees if they are prohibited from purchasing or possessing a firearm by state or federal law.

Section 13 amends s. 493.6121, F.S., to delete the department’s authorization to have access to criminal history records provided by the Department of Law Enforcement to licensed gun dealers, manufacturers, and exporters.

Section 14 amends s. 493.6202, F.S., to delete the requirement that the check in payment of the fee for a private investigative biennial license be certified. It removes the department’s discretion to specify how payment shall be made.

Section 15 amends s. 493.6203, F.S., to clarify that bodyguard services do not count toward certain license requirements. It revises the training requirements for a private investigator intern submitting an application effective January 1, 2011, and it provides for an automatic suspension of intern’s license for failure to document the completion of training within a specified time period if the application was submitted before December 31, 2010.

Section 16 amends s. 493.6302, F.S., to delete the requirement that the check in payment of the fee for a private security services license be certified. It removes the department’s discretion to specify how payment shall be made.

Section 17 amends s. 493.6303, F.S., to revise the training requirements for a security officer submitting an application effective January 1, 2011, and it provides for an automatic suspension of the individual's license for failure to document the completion of training within a specified time period if the application was submitted before December 31, 2010.

Section 18 amends s. 493.6304, F.S., to require an application for a security officer school or training facility to be verified under oath rather than notarized.

Section 19 amends s. 493.6401, F.S., to change terminology from "reposessor" to "recovery agent" which conforms to the current statutory definition in s. 493.6101, F.S.

Section 20 amends s. 493.6402, F.S., to change terminology from "reposessor" to "recovery agent" which conforms to the current statutory definition in s. 493.6101, F.S. It deletes the requirement that the check in payment of the fee for a license for a recovery agent school be certified. It also removes the department's discretion to specify how payment shall be made.

Section 21 amends s. 493.6406, F.S., to change terminology from "reposessor" to "recovery agent" which conforms to the current statutory definition in s. 493.6101, F.S. It requires an application for a recovery agent school or training facility to be verified under oath rather than notarized. It also applies the licensing requirements for a recovery agent school for "recovery agent interns" to "recovery agents."

Section 22 amends s. 500.033, F.S., to add members representing small farmers to the membership of the Florida Food Safety and Food Defense Advisory Council.

Section 23 amends s. 501.605, F.S., to delete the requirement that a person provide his social security number on an application for a license as a commercial telephone seller.

Section 24 amends s. 501.607, F.S., to delete the requirement that a person provide his social security number on an application for a license to be a salesperson for a commercial telephone seller.

Section 25 amends s. 501.913, F.S., to specify that the sample size of each brand of antifreeze being registered shall be between 1 and 2 gallons.

Section 26 amends s. 525.01, F.S., to require terminal suppliers and importers to file an affidavit before selling or offering for sale any petroleum fuel in this state.

Section 27 amends s. 525.09, F.S., to make alternative fuels containing alcohol subject to the state's inspection fee for petroleum fuels.

Section 28 amends s. 526.50, F.S., to provide definitions for "brand" and "formula" to the part of the statutes dealing with registration of "brake fluid" sold in the state.

Section 29 amends s. 526.51, F.S., to rephrases "new product" as "first-time brand-formula combination."

Section 30 amends s. 526.52, F.S., to provide that brake fluid will not be misbranded if the container has a label that says the brake fluid equals or exceeds Federal Motor Vehicle Safety Standard No. 116 adopted by the U.S. Department of Transportation.

Section 31 amends s. 526.53, F.S., by requiring that a stop-sale order for a brand of brake fluid be served on the owner of the brand name as well as any distributor or entity selling or distributing the affected brake fluid. It allows the department to consent to the business disposing of brake fluid that has been the subject of a stop-sale order.

Section 32 amends s. 527.0201, F.S., to make technical changes regarding the examination of licensees selling liquefied petroleum gas and to increase the requirement for continuing education courses from 12 hours to 16 hours for certain liquefied petroleum gas qualifiers.

Section 33 amends s. 527.12, F.S., to increase enforcement tools available to the department for violations of laws regulating the sale of liquefied petroleum gas to include stop-use orders, stop-operation orders, and stop sale orders.

Section 34 amends s. 559.805, F.S., to make technical changes regarding the filing that must be made by a seller or lessee of a business opportunity and to delete the requirement that a list of independent agents include social security numbers.

Section 35 amends s. 559.928, F.S., to delete the requirement that an independent agent that sells travel include his social security number on the annual registration form filed with the department.

Section 36 amends s. 570.0725, F.S., to change from mandatory to permissive the maintenance of public information by the department pertaining to food banks. It places the burden on food banks or similar food recovery organizations to provide information to the department for this purpose and gives the department rule making authority to implement this section.

Section 37 amends s. 570.53, F.S., to delete a cross reference to the responsibility of the Division of Marketing and Development within the department regarding the construction and equipment of an agricultural exposition center in the Belle Glade vicinity.

Section 38 amends s. 570.54, F.S., to delete a cross reference to the responsibility of the Director of the Division of Marketing and Development within the department regarding the construction and equipment of an agricultural exposition center in the Belle Glade vicinity.

Section 39 amends s. 570.55, F.S., to delete the use of a social security number as a means of identifying a handler of tropical or subtropical fruit and vegetables as provided in the Florida Tropical or Subtropical Fruit and Vegetables Sales Law.

Section 40 amends s. 570.902, F.S., to delete the definition for “Museum” referring to the Florida Agricultural Museum to conform to repeal of the act establishing it.

Section 41 amends s. 570.903, F.S., to repeal provisions relating to establishing direct-support organizations for museums and the Florida State Collection of Arthropods. The rule making authority of the department to establish archival procedures relating to museums is likewise deleted.

Section 42 amends s. 573.118, F.S., to require the department to maintain separate accounting records for each marketing order and to cause a thorough audit of the accounts on the request of an advisory council. The audit need not be done by a certified public accountant and a copy must be provided to the advisory council only within 30 days of completion.

Section 43 amends s. 581.011, F.S., to delete the definition for “Museum” referring to the Florida State Collection of Arthropods to conform to repeal of the act establishing it. It revises the definition for “Nursery” to include, rather than exclude, grounds on which aquatic plant species are tended for harvest.

Section 44 amends s. 581.211, F.S., to increase the maximum fine for violation of plant industry regulations from \$5,000 to \$10,000.

Section 45 amends s. 583.13, F.S., to delete a prohibition on the sale of poultry that is not marked with the poultry grade. This will eliminate the conflict that currently exists between state statutes and federal statutes which explicitly prohibit states from imposing any labeling requirements for poultry products prepared at federally inspected establishments.

Section 46 amends s. 585.61, F.S., to designate the animal disease laboratory complex in Osceola County as “The Bronson Animal Disease Diagnostic Laboratory.”

Section 47 amends s. 590.125, F.S., to revise open burning laws. It:

- Defines a “certified pile burner” as an individual who has completed the pile burning certification program and possesses a valid pile burner certification number;
- Expands the definition of “extinguished” to include additional criteria for vegetative land-clearing debris or pile burning in a smoke sensitive area;
- Adds definitions for land-clearing operation, pile burning, prescribed burning, prescription, and yard trash;
- Limits prescribed burning to broadcast burning for purposes of silviculture, wildlife management, ecological maintenance and restoration, hazardous fuels, and range and pasture management;
- Adds new provisions relating to certified pile burning, which pertains to piled, naturally occurring debris from an agricultural, silvicultural, or land-clearing operation of less than 6 months;
- Sets forth procedures to be followed by a certified pile burner and requires authorization from the Division of Forestry;
- Limits the liability of a property owner or his agent if burn procedures are followed unless gross negligence is proven;
- Provides that it is a misdemeanor of the second degree if a certified pile burner violates this section;
- Requires the Division of Forestry to adopt rules to regulate certified pile burning;

- Requires the Division of Forestry to send notices to landowners in each area designated as a wildfire hazard area; and
- Adds new provisions allowing local governments, upon delegation by the Division of Forestry, to have an open burning authorization program so long as it is approved by the division and meets the requirements of this section. It provides enforcement provisions for the program and penalty provisions for individuals who violate the local government's burning authorization program.

Section 48 amends s. 590.14, F.S., to authorize issuance of a notice of violation and imposition of an administrative fine for violation of rules adopted by the Division of Forestry. Violators can be charged with a misdemeanor of the second degree. It states that the legislative intent is to have a penalty severe enough to ensure compliance.

Section 49 amends s. 599.004, F.S. to revise a standard to be certified as a Florida Farm Winery to allow the minimum 10 acre parcel to be used for the production of any commodity used in the production of wine.

Section 50 amends s. 604.15, F.S., to revise the term "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products. It provides a definition for a "responsible position" which refers to someone who has authority to negotiate or purchase agricultural products for a dealer's business or to manage it.

Section 51 amends s. 604.19, F.S., to make technical language changes and to allow a penalty for not renewing an agricultural dealer's license on or before the expiration date to extend to both the principal place of business and each additional place named in the application.

Section 52 amends s. 604.25, F.S., to make technical language changes and to add additional criteria as grounds for denying, refusing to renew, or suspending the license of an agricultural dealer. It prohibits certain persons from holding a responsible position with an agricultural products dealer and authorizes the suspension or revocation of an agricultural products dealer license for employing such a person.

Section 53 amends s. 616.242, F.S., to authorize the department to issue a stop-operation order for failure to comply with Chapter 616, F.S., or any rules adopted under this chapter.

Section 54 amends s. 686.201, F.S., to create an exemption for sellers of travel from the laws regulating sales representative contracts involving commissions.

Section 55 amends s. 790.06, F.S., to allow an applicant for a license to carry a concealed weapon to supply a set of fingerprints administered by the department's Division of Licensing.

Section 56 repeals ss. 570.071 and 570.901, F.S., relating to the Florida Agricultural Exposition and the Florida Agricultural Museum.

Section 57 creates s. 828.126, F.S., to create a first-degree misdemeanor offense for knowingly engaging in sexual conduct or sexual contact with an animal, as defined in the newly created section of law. It also prohibits aiding or abetting another in committing those acts, permitting

such acts to be conducted on premises under the person's control, or organizing, promoting, or performing acts in furtherance of such acts.

The CS provides exemptions from prosecution for accepted animal husbandry practices, conformation judging practices, and accepted veterinary medical practices.

Section 58 requires the department and representatives of the Florida pest control industry to prepare a report for the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of specified legislative committees by January 1, 2011. It requires that the report include recommendations for changes in the law to provide for disciplinary action against licensees of the pest control industry 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 fumigation of existing homes for protection against termite damage. It provides that the report may also address additional issues of concern to members of the industry.

Section 59 provides that this act shall take effect July 1, 2010.

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:

See Private Sector and Government Sector Impacts.

B. Private Sector Impact:

- Tropical foliage dealers will not be liable for annual licensing fees in the amount of \$22,800.
- Apiaries and nurseries will not be liable for annual licensing fees in the amount of \$94,380.
- Sellers of alternative fuels will be liable for inspection fees.
- Expenses will be reduced for industry Advisory Councils by eliminating the mandatory audits by Certified Public Accountants of collections and expenditures of the Marketing Order.

- Wine producers who produce wines made with fruits and vegetables other than grapes will be allowed to become a Certified Florida Farm Winery.
- Food banks, pantries and food recovery programs will be assisted by public notice of where they are and what type of food service they provide.
- The risk of litigation against pile burners will be lowered.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates there will be an increase in a fee imposed on alternative fuels by the Division of Standards and a decrease in fees generated by the Division of Marketing and the Division of Plant Industry as shown.

	FY 2010-11	FY 2011-12	FY 2012-13
Standards - GITF			
Fees on alternative fuels	\$1,066,000	\$1,097,312	\$1,122,550
Brake fluid fees	\$11,850	\$11,850	\$11,850
Marketing - GITF			
Fee decrease due to non- licensing of tropical foliage dealers	(\$22,800)	(\$22,800)	(\$22,800)
Total Revenue	\$1,055,050	\$1,086,362	\$1,111,600

The Department of Environmental Protection has indicated that this committee substitute will require the department to adopt by rule the updated versions of the Model Ordinance for Florida-Friendly Use on Urban Landscapes. The Model Ordinance document was previously created and maintained through a collaborative effort including stakeholders, other state agencies, and the University of Florida's Institute of Food and Agricultural Sciences. Adoption by rule will use a significant amount of staff time that was not previously required.

A bill making sex with animals illegal filed during the 2009 Regular Session created a new third-degree felony. At the time, the Criminal Justice Impact Conference estimated that there would be an insignificant prison bed impact if the law went into effect.¹² This session's bill classifies the offense as a first-degree misdemeanor, which could result in 1 year or less in county jail.¹³ Thus, the bill may have a fiscal impact at the county level. However, in light of the conference's state-impact analysis of the previous year's bill, the impact is not anticipated to be significant.

¹² See Criminal Justice Impact Conference, *Summary of Final Actions – 2009* (table of results, including CS/SB 448 (2009 Reg. Sess.)), available at <http://edr.state.fl.us/conferences/criminaljustice/Impact/2009/2009%20CJIC%20Final%20Actions.pdf>.

¹³ See s. 775.082(4)(a), F.S.

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 Community Affairs on April 14, 2010:

- Changes dates relating to training requirements for certain licensures.
- Adds hazardous fuels to the list of prescribed broadcast burning.
- Makes sex with animals a first degree misdemeanor.

CS by Agriculture Committee on April 7, 2010:

Committee Substitute for Senate Bill 382 is different from Senate Bill 382 in that it:

- Requires that the agricultural use of land present at the time of fee simple acquisition be given priority regarding the management of the land;
- Authorizes local governments to adopt more stringent standards for fertilizer usage than those contained in the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2009);
- Clarifies that a law enforcement officer can work as a security officer but not as a security agency manager;
- Revises application procedures and requirements for a license to work in the private investigative, private security, and repossession services industries and updates the term “repossession” with “recovery agent”;
- Revises the membership of the Florida Food Safety and Food Defense Advisory Council;
- Specifies the quantity of antifreeze to be tested for registration;
- Adds terminal suppliers and importers to sellers of gasoline and oil required to submit an affidavit before doing business and imposes inspection fees on alternative fuel containing alcohol;
- Makes changes to laws regulating brake fluid sold in the state by adding definitions, revising registration procedure, providing a safe harbor for container labels, and changes procedures to be followed on the issuance of a stop-sale order;
- Changes language regarding liquefied petroleum gas qualifying examinations and increases the continuing education requirement from 12 hours to 16 hours. It increases the enforcement tools available to the department to regulate the sale of liquefied petroleum gas;
- Changes provisions for maintenance of public information for food banks;

- Deletes statutory references to an agricultural exposition center in Belle Glade, the Florida Agricultural Museum, and the Florida State Collection of Arthropods, all programs no longer the responsibility of the department;
- Provides for audits on marketing orders to be performed at the request of the advisory council associated with the marketing order;
- Allows the inspection and registration of sites in the natural environment where aquatic plants are tended for harvest;
- Increases the administrative fine cap for violations relating to plant industry;
- Changes the definition of a “dealer” in eggs and poultry and deletes a requirement that containers or advertising display a poultry “grade”;
- Amends open burning laws to add “certified pile burner” as a new classification and provides guidelines for certified pile burning and certification procedures;
- Amends the Florida Farm Winery program to recognize the wine produced from agricultural products other than grapes;
- Exempts tropical foliage from the provisions of the License and Bond law;
- Clarifies that if a dealer in agricultural products fails, refuses or neglects to apply and qualify for a license renewal on or before its expiration date, a penalty shall apply;
- Provides optional ways for an amusement ride owner to satisfy a bond requirement and authorizes the department to issue stop-operation orders for failure to comply with laws or rules regulating fairs and amusement rides;
- Exempts sellers of travel from laws regulating sales representative contracts involving commissions;
- Allows an applicant for a license to carry a concealed weapon to submit fingerprints administered by the Division of Licensing;
- Repeals statutory sections that established the Florida Agricultural Exposition and the Florida Agricultural Museum; and
- Requires the department and representatives of the Florida pest control industry to prepare a report that includes recommendations for changes in the law to provide for disciplinary action against licensees of the pest control industry who violate laws or rules.

B. Amendments:

None.