

House Bill No. 7075

An act relating to the Department of Agriculture and Consumer Services; amending s. 482.021, F.S.; revising the definitions of the terms “employee” and “independent contractor” for purposes of pest control regulation; amending s. 482.051, F.S.; revising certain requirements of the department to adopt rules relating to the use of pesticides for preventing subterranean termites in new construction; amending s. 482.091, F.S.; clarifying provisions governing the performance of pest control services; amending s. 482.156, F.S.; requiring certification of individual commercial landscape maintenance personnel; revising the types of materials such personnel may use; removing obsolete provisions relating to fees; revising criteria for eligibility to take the commercial landscape maintenance personnel examination; clarifying requirements relating to proof of education and insurance; amending s. 482.211, F.S.; clarifying exemption of certain mosquito-control activities from regulation; amending s. 500.033, F.S.; renaming the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council and revising duties accordingly; creating s. 570.954, F.S.; creating the Farm-to-Fuel Initiative; providing the purpose of the initiative and authorizing the department to conduct an education program; providing for coordination between the department and the Department of Environmental Protection; amending s. 582.06, F.S.; revising the membership of the Soil and Water Conservation Council; amending s. 828.30, F.S.; updating references to the Rabies Vaccination Certificate; amending s. 403.067, F.S.; clarifying rules adopted by the department relating to best-management practices; clarifying the authority for certain measures to be implemented by the Department of Environmental Protection for certain water bodies; limiting eligibility for presumption of compliance and release; designating the “Austin Dewey Gay Agricultural Inspection Station” in Escambia County; amending s. 500.12, F.S.; exempting certain producers of sugar cane or sorghum syrup from permitting requirements; amending s. 570.249, F.S.; expanding the conditions under which loan funds to certain agricultural producers may be granted; increasing the maximum amount of a loan; providing definitions; amending s. 810.09, F.S.; providing criminal penalties for trespassing on certain property; requiring warning signage; amending s. 810.011, F.S.; defining the term “agricultural chemicals manufacturing facility”; providing for certain ad valorem taxation for agricultural equipment under certain circumstances; amending s. 601.992, F.S.; authorizing the Department of Citrus or the Department of Agriculture and Consumer Services to collect or require the collection of certain financial payments for certain not-for-profit entities under certain circumstances; authorizing fees and rulemaking; amending s. 212.0501, F.S.; excluding from application of the sales and use tax diesel fuel used in certain farming vehicles or for certain farming purposes; amending s. 212.08, F.S.; exempting from the sales and use tax electricity used for specified agricultural purposes;

providing application; providing a conclusive presumption of taxable use under certain circumstances; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (7) and (12) of section 482.021, Florida Statutes, are amended to read:

482.021 Definitions.—For the purposes of this chapter, and unless otherwise required by the context, the term:

(7) “Employee” means a person who is employed by a licensee that provides that person with necessary training, supervision, pesticides, equipment, and insurance and who receives compensation from and is under the personal supervision and direct control of the licensee’s certified operator in charge and licensee from ~~whose which~~ compensation of the licensee regularly deducts and matches federal insurance contributions and federal income and Social Security taxes.

(12) “Independent contractor” means an entity separate from the licensee that:

(a) Receives moneys from a customer which are deposited in a bank account other than that of the licensee;

(b) Owns or supplies its own service vehicle, equipment, and pesticides;
or

(c) Maintains a business operation, office, or support staff independent of the licensee’s direct control;

(d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials; or

(e)(e) Pays its own workers’ ~~worker’s~~ compensation as an independent contractor.

Section 2. Subsection (5) of section 482.051, Florida Statutes, is amended to read:

482.051 Rules.—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(5) That any pesticide used as the primary preventive treatment for preconstruction treatments for the prevention of subterranean termites in new construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each

preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

Section 3. Paragraph (a) of subsection (2) of section 482.091, Florida Statutes, is amended to read:

482.091 Employee identification cards.—

(2)(a) An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and ~~shall~~ may not be an independent contractor. An identification cardholder ~~shall operate~~ may perform only ~~pest control services~~ out of, ~~and~~ ~~or~~ for customers ~~assigned~~ arising from, the licensee's licensed business location. An identification cardholder ~~shall~~ may not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and ~~shall~~ may perform pest control only for the licensee's customers.

Section 4. Subsections (1), (2), and (3) of section 482.156, Florida Statutes, are amended to read:

482.156 Limited certification for commercial landscape maintenance personnel.—

(1) The department shall establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to apply herbicides for controlling weeds in plant beds and to perform integrated pest management on ornamental plants using ~~the following materials:~~ insecticides and fungicides having the signal word "caution" but not having the word "warning" or "danger" on the label, ~~insecticidal soaps, horticultural oils, and bacillus thuringiensis formulations.~~ The application equipment that may be used by a person certified pursuant to this section is limited to portable, handheld 3-gallon compressed air sprayers or backpack sprayers having no more than a 5-gallon capacity and does not include power equipment.

(2)(a) A person seeking limited certification under this section must pass an examination given by the department. Each application for examination must be accompanied by an examination fee set by rule of the department, in an amount of not more than \$150 or less than \$50; ~~however, until a rule setting this fee is adopted by the department, the examination fee is \$50.~~ Prior to the department's issuing a limited certification under this section, each person ~~applying~~ making application for the certification ~~under this section~~ must furnish proof of having a certificate of insurance which states that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage required by s. 482.071(4).

(b) To be eligible to take the examination, an applicant must have completed 6 ~~8~~ classroom hours of plant bed and ornamental continuing education training approved by the department and provide sufficient proof, ac-

ording to criteria established by department rule, ~~that the applicant has been in the landscape maintenance business for at least 3 years.~~

(b) The department shall provide the appropriate reference materials for the examination and make the examination readily accessible and available to applicants at least quarterly or as necessary in each county.

(3) An application for recertification under this section must be made annually and be accompanied by a recertification fee set by rule of the department, in an amount of not more than \$75 or less than \$25; ~~however, until a rule setting this fee is adopted by the department, the fee for recertification is \$25.~~ The application must also be accompanied by proof of having completed 4 classroom hours of acceptable continuing education and the same proof of having a certificate of insurance as is required for issuance of this initial certification. After a grace period not exceeding 30 calendar days following the annual date that recertification is due, a late renewal charge of \$50 shall be assessed and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.

Section 5. Subsection (7) of section 482.211, Florida Statutes, is amended to read:

482.211 Exemptions.—This chapter does not apply to:

(7) Area Mosquito control activities conducted by a local government or district established under chapter 388 or by special act or by a contractor of the local government or district.

Section 6. Section 500.033, Florida Statutes, is amended to read:

500.033 Florida Food Safety and Food Defense Security Advisory Council.—

(1) There is created the Florida Food Safety and Food Defense Security Advisory Council for the purpose of serving 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 Florida Food Safety and Food Defense Security Advisory Council shall consist of, but not be limited to: the Commissioner of Agriculture or his or her designee; the Secretary of Health 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 Florida Department of Law Enforcement; members representing the production, processing, distribution, and sale of foods; consumers ~~or and/or~~ members of citizens groups; representatives of ~~or~~ food industry groups; scientists or other experts in aspects of food safety from state universities; representatives from local, state, and federal agencies that are charged with responsibilities for food safety or food defense security; 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 Commissioner of Agriculture shall appoint the remaining members. The council shall make periodic reports to the Department of Agriculture and Consumer Services concerning findings and recommendations in the area of food safety and food defense security.

(2) The council shall consider the development of appropriate advice or recommendations on food safety or food defense security issues. In the discharge of their duties, the council members may receive for review confidential data exempt from the provisions of s. 119.07(1); however, it is unlawful for any member of the council to use the data for his or her advantage or reveal the data to the general public.

Section 7. Section 570.954, Florida Statutes, is created to read:

570.954 Farm-to-fuel initiative.—

(1) The department may develop a farm-to-fuel initiative to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass and to enhance the value of agricultural products or expand agribusiness in the state.

(2) The department may conduct a statewide comprehensive information and education program aimed at educating the general public about the benefits of renewable energy and the use of alternative fuels.

(3) The department shall coordinate with and solicit the expertise of the state energy office within the Department of Environmental Protection when developing and implementing this initiative.

Section 8. Paragraphs (b) and (c) of subsection (1) of section 582.06, Florida Statutes, are amended to read:

582.06 Soil and Water Conservation Council; powers and duties.—

(1) COMPOSITION.—The Soil and Water Conservation Council is created in the Department of Agriculture and Consumer Services and shall be composed of 23 members as follows:

(b) ~~Twelve nonvoting ex-officio~~ members shall include one representative each from the Department of Environmental Protection, the five water management districts, the Institute of Food and Agricultural Sciences at the University of Florida, the United States Department of Agriculture Natural Resources Conservation Service, the Florida Association of Counties, and the Florida League of Cities, and two representatives of environmental interests.

(c) All members shall be appointed by the commissioner. ~~Ex-officio~~ Members appointed pursuant to paragraph (b) shall be appointed by the commissioner from recommendations provided by the organization or interest represented.

Section 9. Subsection (3) of section 828.30, Florida Statutes, is amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the Form 51, "Rabies Vaccination Certificate," of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate Form 51. The veterinarian who administers the rabies vaccine to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.

Section 10. Paragraph (c) of subsection (7) and subsection (11) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) Best management practices.—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts pursuant to ss. 120.536(1) and 120.54, and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (11)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to

assure the implementation of the practices, including recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (11)(b) shall be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, shall notify the appropriate water management district or and the Department of Agriculture and Consumer Services of its initial verification prior to the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from the provisions of s. 376.307(5). The presumption of compliance and release shall be limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release shall be limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information which are otherwise not public records, which are reported to

the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request of the department or any water management district, the Department of Agriculture and Consumer Services shall make such individual agricultural records available to that agency, provided that the confidentiality specified by this subparagraph for such records is maintained. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

6. The provisions of subparagraphs 1. and 2. shall not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department shall not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to ~~paragraph subparagraphs (7)(c)1. and 2.~~ for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

Section 11. Austin Dewey Gay Agricultural Inspection Station designated; department to erect suitable markers.—

(1) The agricultural inspection station located at or near mile marker 1 on Interstate Highway 10 in Escambia County is designated as “Austin Dewey Gay Memorial Agricultural Inspection Station.”

(2) The Department of Agriculture and Consumer Services is directed to erect suitable markers designating the Austin Dewey Gay Memorial Agricultural Inspection Station as described in subsection (1).

Section 12. Paragraph (a) of subsection (1) of section 500.12, Florida Statutes, is amended to read:

500.12 Food permits; building permits.—

(1)(a) A food permit from the department is required of any person who operates a food establishment or retail food store, except:

1. Persons operating minor food outlets, including, but not limited to, video stores, that sell commercially prepackaged, nonpotentially hazardous candy, chewing gum, soda, or popcorn, provided the shelf space for those items does not exceed 12 linear feet and no other food is sold by the minor food outlet.

2. Persons subject to continuous, onsite federal or state inspection.

3. Persons selling only legumes in the shell, either parched, roasted, or boiled.

4. Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. Such bottles must contain a label listing the producer's name and street address, all added ingredients, the net weight or volume of product, and a statement that reads "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

Section 13. Subsection (1) of section 570.249, Florida Statutes, is amended to read:

570.249 Agricultural Economic Development Program disaster loans and grants and aid.—

(1) USE OF LOAN FUNDS.—

(a) ~~Loan funds to agricultural producers who have experienced crop~~ losses from a natural disaster or a socioeconomic condition or event may be used to:

1. Restore or replace essential physical property or remove debris from essential physical property, ~~such as animals, fences, equipment, structural production facilities, and orchard trees;~~

2. Pay all or part of production costs associated with the disaster year;

3. Pay essential family living expenses; ~~and~~

4. Restructure farm debts.

(b) To be eligible, agricultural producers must have a parcel or parcels of land in production not exceeding 300 acres.

(c) Funds may be issued as direct loans, or as loan guarantees for up to 90 percent of the total loan, in amounts not less than \$30,000 nor more than ~~\$300,000~~ \$250,000. Applicants must provide at least 10 percent equity.

(d) For purposes of this subsection, the term:

1. "Losses" means loss or damage to crops, agricultural products, agricultural facilities, infrastructure, or farmworker housing.

2. "Essential physical property" means fences, equipment, structural production facilities such as shade houses and greenhouses, other agricultural facilities, infrastructure, or farmworker housing.

Section 14. Paragraph (h) is added to subsection (2) of section 810.09, Florida Statutes, to read:

810.09 Trespass on property other than structure or conveyance.—

(2)

(h) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

Section 15. Subsection (12) is added to section 810.011, Florida Statutes, to read:

810.011 Definitions.—As used in this chapter:

(12) “Agricultural chemicals manufacturing facility” means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

Section 16. Assessment of obsolete agricultural equipment.—

(1) For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461, Florida Statutes, and that is no longer usable for its intended purpose shall be deemed to have a market value no greater than its value for salvage.

(2) This section shall take effect January 1, 2007.

Section 17. Section 601.992, Florida Statutes, is amended to read:

601.992 Collection of dues and other payments on behalf of certain non-profit corporations engaged in market news and grower education.—The Florida Department of Citrus or the Department of Agriculture and Consumer Services or their successors ~~its successor~~ may collect or compel the entities regulated by the department to collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation, and its related not-for-profit corporations, located in this state which receives payments or dues from its members. Such not-for-profit corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in growing citrus in this state for commercial sale. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation which are sufficient but do not

exceed the amount necessary to ensure that any direct costs incurred by the department in implementing this section are borne by the requesting corporation and not by the department.

Section 18. Subsection (3) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(3) For purposes of this section, “consumption, use, or storage by a trade or business” does not include those uses of diesel fuel specifically exempt on account of residential purposes, or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state on account of agricultural purposes as defined in s. 212.08(5), or the purchase or storage of diesel fuel held for resale.

Section 19. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(e)1. Gas used for certain agricultural purposes.—Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

2. Electricity used for certain agricultural purposes.—Electricity used directly and exclusively for production or processing of agricultural products on the farm is exempt from the tax imposed by this chapter. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.