

CHAPTER 2010-277

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 981

An act relating to agriculture; amending s. 193.461, F.S.; clarifying that land classified as agricultural retains that classification when offered for sale under certain circumstances; providing for retroactive application; providing the methodology for assessing certain structures and improvements used for horticultural production; amending s. 369.20, F.S.; authorizing the Fish and Wildlife Conservation Commission to enter into an agreement with the Department of Environmental Protection for the uniform regulation of pesticides applied to waters of the state; revising exemptions from water pollution permits; amending s. 403.088, F.S.; providing permits for applying pesticides to the waters of the state; requiring the Department of Environmental Protection to enter into agreements with the Department of Agriculture and Consumer Services and the commission for the uniform regulation of pesticides applied to the waters of the state; authorizing temporary deviations from certain rule provisions adopted by the Department of Environmental Protection for certain pesticides under certain conditions; amending s. 487.163, F.S.; requiring the Department of Agriculture and Consumer Services to enter into an agreement with the Department of Environmental Protection for the uniform regulation of pesticides applied to the waters of the state; amending s. 573.112, F.S.; providing that the Citrus Research and Development Foundation shall provide advice to the Department of Agriculture and Consumer Services with respect to citrus research marketing orders, conduct citrus research, and perform other duties assigned by the department; amending s. 573.118, F.S.; providing for the deposit of certain agricultural assessments; revising the assessment rate on citrus fruit; amending s. 581.031, F.S.; expanding the type of research projects that may be conducted by the Department of Agriculture and Consumer Services; amending s. 601.07, F.S.; revising the location of the executive offices of the Department of Citrus; requiring the department and representatives of the state pest control industry to submit a report to the Legislature; requiring that the report include recommendations for changes in the law to provide for disciplinary action against licensees of the pest control industry under certain circumstances; providing that the report may also address additional issues of concern to the department and members of the industry; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) and paragraph (c) of subsection (6) of section 193.461, Florida Statutes, are amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(3)

(b) Subject to the restrictions specified set out in this section, only lands that ~~which~~ are used primarily for bona fide agricultural purposes shall be classified agricultural. The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.

1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

a.1. The length of time the land has been so used.

b.2. Whether the use has been continuous.

c.3. The purchase price paid.

d.4. Size, as it relates to specific agricultural use, but ~~in no event shall a minimum acreage~~ may not be required for agricultural assessment.

e.5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices.

f.6. Whether the such land is under lease and, if so, the effective length, terms, and conditions of the lease.

g.7. Such other factors as may from time to time become applicable.

2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection, which structures or improvements are consistent with the Department of Agriculture and Consumer Services' interim measures or best management practices adopted pursuant to s. 570.085 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

Section 2. The amendment by this act to s. 193.461(3)(b), Florida Statutes, is remedial and clarifying in nature and applies retroactively to all parcels for which a final court order has not yet been entered as of the effective date of this act.

Section 3. Subsections (4) and (9) of section 369.20, Florida Statutes, are amended to read:

369.20 Florida Aquatic Weed Control Act.—

(4) The commission shall also promote, develop, and support research activities directed toward the more effective and efficient control of aquatic plants. In the furtherance of this purpose, the commission may is authorized to:

(a) Accept donations and grants of funds and services from both public and private sources;

(b) Contract or enter into agreements with public or private agencies or corporations for research and development of aquatic plant control methods or for the performance of aquatic plant control activities. The commission may enter into an agreement with the Department of Environmental Protection to ensure that pesticides applied to the waters of the state are regulated uniformly, including provisions for the coordination of agency staff and resources, through the implementation of permitting, compliance, and enforcement activities under ss. 403.088 and 403.0885;

(c) Construct, acquire, operate, and maintain facilities and equipment; and

(d) Enter upon, or authorize the entry upon, private property for purposes of making surveys and examinations and to engage in aquatic plant control activities; and such entry shall not be deemed a trespass.

(9) A permit issued pursuant to this section for the application of herbicides to waters of in the state for the control of aquatic plants, algae, or invasive exotic plants is exempt from the requirement to obtain a water pollution operation permit except as provided in ss. pursuant to s. 403.088 and 403.0885.

Section 4. Subsection (1) of section 403.088, Florida Statutes, is amended to read:

403.088 Water pollution operation permits; conditions.—

(1) No person, Without the written authorization of the department, a person may not shall discharge any waste into the waters of within the state any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for such waters them. However, this section does shall not be deemed to prohibit the application of pesticides to such waters in the state for

the control of insects, aquatic weeds, or algae, or other pests if provided the application is performed in accordance with this section.

(a) Upon execution of the agreement required in s. 487.163(3), the department may develop a permit or other authorization as required by 33 U.S.C. s. 1342 for the application of pesticides. A person must obtain such permit or other authorization before applying pesticides to the waters of the state.

(b) In consultation with the Department of Agriculture and Consumer Services and the Fish and Wildlife Conservation Commission, the department shall also develop a general permit under s. 403.0885(2), for the application of pesticides.

(c) The department shall also enter into agreements with the Department of Agriculture and Consumer Services pursuant to a program approved by the Department of Health, in the case of insect or other pest control, and with the Fish and Wildlife Conservation Commission, in the case of aquatic weed, other aquatic pests, or algae control. The department is directed to enter into interagency agreements to establish the procedures for program approval. Such agreements must shall provide for public health, welfare, and safety, as well as environmental factors, and must ensure that pesticides applied to waters of the state are regulated uniformly, including provisions for the coordination of agency staff and resources, through the implementation of permitting, compliance, and enforcement activities under s. 403.0885 and this section. Pesticides that are Approved programs must provide that only chemicals approved for a the particular use by the United States Environmental Protection Agency or by the Department of Agriculture and Consumer Services may be employed and that they be applied in accordance with registered label instructions, state standards for such application, including any permit or other authorization required by this subsection, and the provisions of the Florida Pesticide Law, part I of chapter 487, are allowed a temporary deviation from the acute toxicity provisions of the department's rule establishing surface water quality standards, not to exceed the time necessary to control the target pests and only if the application does not reduce the quality of the receiving waters below the classification for such waters and is not likely to adversely affect any threatened or endangered species.

Section 5. Subsection (3) is added to section 487.163, Florida Statutes, to read:

487.163 Information; interagency cooperation.—

(3) The department shall enter into an agreement with the Department of Environmental Protection to ensure that pesticides applied to waters of the state are regulated uniformly, including provisions for the coordination of agency staff and resources, through the implementation of permitting, compliance, and enforcement activities under ss. 403.088 and 403.0885.

Section 6. Subsection (7) is added to section 573.112, Florida Statutes, to read:

573.112 Advisory council.—

(7) Notwithstanding any provision of this section, the Citrus Research and Development Foundation, Inc., a direct-support organization of the University of Florida established pursuant to s. 1004.28, shall serve as the advisory council for a citrus research marketing order, provide the department with advice on administering the order, and, in accordance with the order, conduct citrus research and perform other duties assigned by the department. Notwithstanding s. 1004.28(3), the foundation's board of directors shall be composed of 13 members, including 10 citrus growers, 2 representatives of the university's Institute of Food and Agricultural Sciences, and 1 member appointed by the Commissioner of Agriculture.

Section 7. Subsections (1) and (6) of section 573.118, Florida Statutes, are amended to read:

573.118 Assessment; funds; audit; loans.—

(1) To provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order, every person engaged in the production, distributing, or handling of agricultural commodities within this state, and directly affected by any marketing order, shall pay to the department, at such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses. Each person's share of expenses shall be that proportion which the total volume of agricultural commodities produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodities produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the volume of agricultural commodities sold or some other equitable basis. For convenience of collection, upon request of the department, handlers of the commodities shall pay any producer assessments. Handlers paying assessments for and on behalf of any producers may shall, at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers. The collected assessments shall be deposited into the appropriate General Inspection trust fund and shall be used for the sole purpose of implementing the marketing order for which the assessment was collected. The department is not subject to the procedures found in s. 287.057 in the expenditure of these funds. However, the director of the Division of Marketing and Development shall file with the internal auditor of the department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.

(6) An Any assessment levied upon citrus fruit under this section may not exceed the rate established in the marketing order and shall be at a rate not to exceed 1 cent per standard packed box of citrus fruit grown and placed into the primary channel of trade in this state. All revenues from such assessment collected by the department shall be deposited into the Citrus Inspection Trust Fund.

Section 8. Subsection (32) of section 581.031, Florida Statutes, is amended to read:

581.031 Department; powers and duties.—The department has the following powers and duties:

(32) To The Department of Agriculture and Consumer Services shall conduct or cause to be conducted those research projects on citrus diseases, including, but not limited to, citrus canker and citrus greening, which are recommended by the Florida Citrus Production Research and Development Foundation, Inc. Advisory Council, within the limits of appropriations made specifically for such purpose.

Section 9. Section 601.07, Florida Statutes, is amended to read:

601.07 Location of executive offices.—The executive offices of the Department of Citrus shall be established and maintained at Bartow Lakeland.

Section 10. The Department of Agriculture and Consumer Services shall meet with duly authorized representatives of established organizations representing the state's pest control industry and shall prepare and submit a report to the President of the Senate, the Speaker of the House of Representatives, the chair of the Senate Committee on Agriculture, and the chair of the House Committee on Agribusiness by January 1, 2011. The report shall include recommended amendments to chapter 482, Florida Statutes, that provide for disciplinary action to be taken 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, thereby providing additional safeguards for consumers. The report may also address other issues of concern to the department and to members of the industry, such as changes to requirements for professional liability insurance coverage or the amount of bond required, duties and responsibilities of a certified operator, issuance of a centralized pest control service center license, and limited certification for commercial wildlife management personnel.

Section 11. This act shall take effect July 1, 2010.

Vetoed by the Governor May 15, 2010.

Passed the House over the veto November 16, 2010.

Passed the Senate over the veto November 16, 2010.

Filed in Office Secretary of State November 16, 2010.