

**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 Transportation Committee

**BILL:** CS/CS/SB 1184

**INTRODUCER:** Transportation Committee and Committee on Agriculture and Senator Norman

**SUBJECT:** Department of Agriculture and Consumer Services

**DATE:** February 8, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Buford	AG	<b>Fav/CS</b>
2.	Weidenbenner	Buford	TR	<b>Fav/CS</b>
3.			BC	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This committee substitute includes the following provisions related to agriculture:

- Prohibits governmental entities from charging an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural under certain circumstances. The bill replaces the word “county” with “governmental entity” in the provisions described above which has the effect of expanding, from only counties to counties, municipalities, and regional governmental entities.
- Authorizes the use of citrus harvesting equipment and citrus fruit loaders to transport citrus between farms on public state highways without violating the public highway use restriction for the purpose of qualifying for the motor fuel tax refund.
- Authorizes the Department of Agriculture and Consumer Services (department) to enforce the state laws and rules relating to the use of commercial feed stocks. It requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.

This committee substitute also includes the following provisions related to licensed security officers:

- Makes it a first degree misdemeanor for a person to engage in any activity for which ch. 493, F.S., requires a license if the person does not hold the required license. However, a second or subsequent violation is a third degree felony and the department may seek the imposition of a civil penalty not to exceed \$10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person's license.
- Makes it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. However, it is a second degree felony if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.
- Authorizes an armed licensed security officer and armed licensed security agency manager, in uniform, to temporarily detain a person on the premises of a critical infrastructure facility ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention if the security officer or security agency manager has probable cause to believe the person has committed or is committing a crime against the client of the security officer or security agency manager or the client's patron. The bill provides procedures for notifying law enforcement and transferring the detained person.
- Authorizes the security officer or security agency manager to search the person temporarily detained if they observe that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon.

The Legislature's Office of Economic and Demographic Research (EDR) has reviewed SB 154 and has indicated it intends to recommend to the Criminal Justice Impact Conference that the bill has an insignificant prison bed impact.

This committee substitute substantially amends sections 163.3162, 206.41, 316.515, 493.6120, 570.07 and 580.036 of the Florida Statutes and creates an undesignated section of the Florida Statutes.

## **II. Present Situation:**

### **Stormwater Utility Fees**

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. This may create a duplicative financial burden for the agricultural operation that

is already paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

### **Agricultural Lands and Practices Act**

In 2003, the Legislature passed the Agricultural Lands and Practices Act, codified in s. 163.3162, F.S., to prohibit counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a *bona fide* farm or farm operation on agricultural land if such activity is regulated through best management practices (BMPs), interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. While the Agricultural Land and Practices Act banned the adoption of future local government restrictive measures, it did not explicitly prohibit the enforcement of existing local government measures.

In 2011, the Legislature overrode the veto of HB 7103, which passed the House and Senate during the 2010 Legislative Session. HB 7103, in part, amended s. 163.3162(3)(b), F.S., to provide that a county cannot charge an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP), or works-of-the-district permit or implements best management practices (BMPs). In addition, HB 7103 amended s. 163.3162(3)(c), F.S., to provide that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a *bona fide* farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a *bona fide* farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands.

### **Motor Fuel Taxes**

Agricultural, aquacultural, commercial fishing, or commercial aviation permit holders who have paid the local option fuel tax, an additional tax designated as the "State Comprehensive

Enhanced Transportation System Tax,” or fuel sales tax are entitled to a refund of a portion of the fuel tax levied under sections 206.41(1)(g) and 206.41(c), F.S. For the purpose of establishing what activities qualify for the tax refund, “agricultural and aquacultural purposes” means “motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction from being driven or operated upon Florida public highways does not apply to the movement of a farm vehicle or farm equipment between farms. It also does not include citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund.

### **Uniform Traffic Control Law**

Chapter 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., provides that, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law. The Florida Uniform Traffic Control Law does not currently authorize the use of citrus harvesting equipment and citrus fruit loaders to the list of machinery authorized to transport certain perishable agricultural products or to authorize the use of certain motor vehicles to transport citrus.

### **Private Security, Private Investigative, and Recovery Services**

The Division of Licensing within the department is responsible for the regulation of licensing of private security, private investigative, and recovery services.<sup>1</sup> Section 493.6101(19), F.S., defines a “security officer” as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return

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<sup>1</sup> The responsibility for regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. *See* ss. 1, 3-10, ch. 2002-295, L.O.F.

thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

Section 493.6101(16), F.S., defines a “private investigator” as “any individual who, for consideration, advertises as providing or performs private investigation.” Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.<sup>2</sup>

Section 493.6101(21), F.S., defines a “recovery agent” as “any individual who, for consideration, advertises as providing or performs repossessions.” Section 493.6101(20), F.S., defines “recovery agency” as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.” Section 493.6101(22), F.S., defines “repossession” as recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes “by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These individuals include local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”<sup>3</sup>

Section 493.6106(1), F.S, establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must meet the following criteria:

- Be at least 18 years of age.
- Be of good moral character.

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<sup>2</sup> Section 493.6101(17), F.S.

<sup>3</sup> Section 493.6102(1)-(4), F.S.

- Not have been adjudicated incapacitated, unless capacity has been judicially restored.
- Not have been involuntarily placed in a treatment facility for the mentally ill, unless competency has been judicially restored.
- Not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.
- Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired.
- Not have been committed under ch. 397, F.S., former ch. 396, F.S., or a similar law in any other state.
- Not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state.
- Not have had two or more convictions under s. 316.193, F.S., or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.
- Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law relating to controlled substances in any other state within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.
- Be a citizen or permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

**License Classifications**

Chapter 493, F.S., provides for numerous classifications of licenses within the three general categories of licenses, as follows:<sup>4</sup>

PRIVATE INVESTIGATION	
Agency	Class "A"
Private Investigator	Class "C"
Armed Private Investigator	Class "C" & Class "G"
Branch Office	Class "AA"
Manager	Class "C" or Class "MA" or Class "M"
Intern	Class "CC"
PRIVATE SECURITY	
Agency	Class "B"
Security Officer	Class "D"
Armed Security Officer	Class "D" & Class "G"
Branch Office	Class "BB"
Manager	Class "MB" or Class "M"
REPOSSESSION ACTIVITY	
Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or Class "E"

<sup>4</sup> See 5N-1.116(1), F.A.C.

Intern	Class "EE"
<b>COMBINED PRIVATE INVESTIGATION AND SECURITY</b>	
Agency	Class "A" & Class "B"
Branch Office	Class "AB"
Manager	Class "M"
<b>SCHOOLS</b>	
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"
<b>FIREARMS</b>	
Instructor	Class "K"
Statewide Firearm License	Class "G"
<b>MANAGERS</b>	
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	Appropriate Manager's License and Class "G"

**D, MB, and G Licenses**

Generally, an applicant for a Class "D" security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content and number of hours of each subject area to be taught. Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized to carry their firearms on duty.

**Detention by Certified Seaport Security Officers**

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F.S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons for a reasonable period of time if they have "probable cause to believe that a person is trespassing ... in a designated restricted area" pending the arrival of a law enforcement officer.<sup>5</sup> In addition, this action does not "render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention." Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

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<sup>5</sup> "Restricted area" is defined by 33 C.F.R. part 105. See also s. 311.12, F.S.

To date, the department has not issued any revised licenses to a Class “D” security officer stating that the person is certified as a seaport security officer.

### **Impersonating a Licensee**

Section 493.6118(1), F.S., authorizes the department to “take disciplinary action” against “any unlicensed person engaged in activities regulated” in ch. 493, F.S., related to private security, private investigative, and recovery services. Grounds for such disciplinary action include:

- Conducting activities regulated under ch. 493, F.S., without a license or with a revoked or suspended license.
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer.
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under ch. 493, F.S.
- Violating any provision of ch. 493, F.S.

When the department finds any of the above violations it may impose an administrative fine not to exceed \$1,000 for every count or separate offense.<sup>6</sup> Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception,<sup>7</sup> commits a first degree misdemeanor.<sup>8</sup> The department is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of the department.<sup>9</sup>

### **The Power to Detain**

Section 901.151(2)-(4), F.S., provides:

- Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person’s presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.<sup>10</sup>

<sup>6</sup> Section 493.6118(2)(c), F.S.

<sup>7</sup> The exception is in s. 493.6405, F.S. This section deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or intern, and provides that a violation is a third degree felony.

<sup>8</sup> A first degree misdemeanor is punishable by up to 1 year in a county jail and a fine of up to \$1,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

<sup>9</sup> Section 493.6121(6), F.S.

<sup>10</sup> “This standard is consonant with the holding in *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), which requires ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’ For reasonable suspicion justifying a detention to exist, ‘the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.’ *United States v. Cortez*, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).” *Tillman v. State*, 934 So.2d 1263, 1273 (Fla.2006).



- No person shall be temporarily detained [under the provisions of s. 901.151(2), F.S.] longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.
- If at any time after the onset of the temporary detention authorized by s. 901.151(2), F.S., probable cause for arrest of the person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or a transit agency's employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. Detention provisions are also applicable to transit fare evasion.

Section 509.143, F.S., authorizes innkeepers and food service establishment operators to "take a person into custody and detain that person" if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others. In these situations, a law enforcement agency must be immediately contacted.

### **"Citizen's Arrest"**

A citizen has a common law right to make a "citizen's arrest" for a felony or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person's guilt.<sup>11</sup>

### **Commercial Feed and Feedstuff**

The department is authorized by s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds. It does not currently have the authority to enforce laws and rules relating to the use of commercial feed and feedstuff.

The department's Feed Section is responsible for the enforcement and administration of the Florida Commercial Feed Law, chapter 580, F.S., and chapter 5E-3, Florida Administrative Code. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and provides that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable. This committee substitute would authorize the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and

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<sup>11</sup> *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).

welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3162, F.S., to replace most references to the word “county” in the Agricultural Lands and Practices Act with the term “governmental entity.” It adds a definition to this section for the term and specifies that it has the same meaning as provided in s. 164.1031, F.S., where “governmental entity” is defined to include local and regional government entities. These changes have the effect of expanding from just counties to counties, municipalities, and regional governments, the types of governmental entities that are not authorized to charge an assessment or fee for stormwater management on a *bona fide* farm operation on land classified as agricultural, under certain circumstances.

**Section 2** amends s. 206.41, F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the state without violating the public highway use restriction, thereby qualifying for the motor fuel tax refund provided in this section.

**Section 3** amends s. 316.515, F.S., to revise the Florida Uniform Traffic Control Law to allow the use of citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products between farms. It also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by equipment specified in this section.

**Section 4** amends s. 493.6120, F.S., to make it a first degree misdemeanor for a person to engage in any activity for which ch. 493, F.S., requires a license if the person does not hold the required license. However, a second or subsequent violation is a third degree felony<sup>12</sup> and the department may seek the imposition of a civil penalty not to exceed \$10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person’s license.

This statute is also amended to make it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. However, it is a second degree felony<sup>13</sup> if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.<sup>14</sup>

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<sup>12</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

<sup>13</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

<sup>14</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000 may also be imposed. See ss. 775.082 and 775.083, F.S.

**Section 5** creates an undesignated section of the Florida Statutes to provide that an on duty, uniformed armed licensed security officer or armed licensed security agency manager, may temporarily detain a person on the premises of a critical infrastructure facility if the security officer or security agency manager has probable cause to believe that the person has committed or is committing a crime against the client of the security officer or security agency manager or the client's patron. The person may be temporarily detained for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The security officer or security agency manager must notify the law enforcement agency as soon as reasonably possible. The temporary detention must be done solely for the purpose of detaining the person before the arrival of a law enforcement officer. Custody of this person must be immediately transferred to the responding law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person.

The security officer or security agency manager may search the person temporarily detained if the security officer or security agency manager observes that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer the weapon to the responding law enforcement officer.

This section defines the term "critical infrastructure facility" to mean any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel *and* is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electric transmission or distribution facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- A deep water port or railroad switching yard.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A public transportation facility as defined in s. 343.62, F.S.

In addition, a security officer or security agency manager must perform duties required under this new section in a uniform that bears at least one patch or emblem visible at all times clearly identifying the employing agency.

**Section 6** amends s. 570.07, F.S., to authorize the department to enforce the laws and rules of the state relating to the use of commercial stock feed.

**Section 7** amends s. 580.036, F.S., to authorize the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

**Section 8** provides that this act shall take effect July 1, 2012.

**Other Potential Implications:**

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a “critical infrastructure facility” where security personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of “critical infrastructure facility” is not necessarily public information.

**IV. Constitutional Issues:**

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

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits a governmental entity from imposing an assessment or fee for stormwater management on certain lands. However, because this legislation has not yet been reviewed by the Revenue Estimating Conference, it is unclear if the reduction in revenues meets the threshold of the mandate or if an exemption applies.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

It is unclear at this point whether the limited searches and seizures which security officers and security agency managers are authorized to make under the bill would raise any Fourth Amendment issues. Since the bill is not law and current law does not specifically provide such search and seizure authorization (e.g., s. 311.124, F.S., which is relevant to seaport security officers, only authorizes temporary *detention* of a person in certain circumstances), there is no relevant and controlling Fourth Amendment case regarding searches and seizures by security officers or security agency managers. However,

security officers and security agency managers should be aware that any evidence they seize may be later used as evidence in a criminal case and should be handled accordingly.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

In 2009, the Revenue Estimating Conference (conference) made the following comment regarding identical legislation that is in section 1 of the bill: “Provisions of this bill that prohibit a county or municipality from imposing an assessment or fee for stormwater management on certain lands will have a negative indeterminate impact on local government revenues as determined by the conference.”

**B. Private Sector Impact:**

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

The bill provides relief to citrus producers who pay certain taxes on motor fuel for use in citrus harvesting equipment or citrus fruit loaders.

**C. Government Sector Impact:**

By providing a tax refund for fuel taxes on citrus harvesting equipment or citrus fruit loaders, the state will experience a loss of sales tax revenue. Because this bill has not yet been reviewed by the Revenue Estimating Conference, the fiscal impact on state government is indeterminate at this time.

The bill creates misdemeanor and felony offenses for specific unlicensed activity violations of ch. 493, F.S., as it relates to private investigations, private security, and repossession services. The bill authorizes the department to impose a civil penalty when a person commits a second or subsequent offense not to exceed \$10,000. All fines collected are to be deposited into the Fine and Forfeiture Fund by the clerk of the court in the county where the offense occurred, pursuant to s. 775.083, F.S. All revenues received by the clerk in the Fine and Forfeiture fund from court-related fees, fines, costs, and service charges are considered state funds and shall be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. The amount of fines to be potentially generated by the provisions of this bill are unknown at this time.

Although the Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not reviewed this bill, it did determine that a very similar bill, SB 1588, during last year’s session was estimated to have an insignificant prison bed impact. Further, the Legislature’s Office of Economic

and Demographic Research (EDR) has reviewed SB 154 and has indicated it intends to recommend to the CJIC that the bill has an insignificant prison bed impact.<sup>15</sup>

#### **VI. Technical Deficiencies:**

Throughout the bill the words “security officer or security agency manager” appear. However, on line 128 of the bill, only “security officer” is referenced. For consistency, the sponsor of the bill may want to consider a technical, conforming amendment.

#### **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/CS by Transportation Committee on February 7, 2012:**

- CS/CS/SB 1184 is different from CS/SB 1184 in that it:
  - Provides criminal and civil penalties for unlicensed persons engaging in activities for which a license is required under ch. 493, F.S.; and
- Provides a criminal penalty for a person who knowingly and intentionally forces another person to assist in activities for which a license is required under ch. 493, F.S, while impersonating a professional licensed under that chapter; and
- Authorizes certain armed, licensed security officers to detain a person on the premises of a critical infrastructure facility under circumstances described; and
- Provides procedures for notifying law enforcement and transferring the detained person; and
- Authorizes search of the detained person under certain conditions; and
- Defines the term “critical infrastructure facility,” and
- Requires certain persons licensed under ch. 493, F.S., to wear uniforms.

##### **CS by Agriculture Committee on January 23, 2012:**

Committee Substitute for Senate Bill 1184 is different from Senate Bill 1184 in that it:

- Deletes Section 6 of SB 1184 which prohibits a person to knowingly enter any nonpublic area of a farm and, without prior written consent to record sounds or images of the farm or farm operations, with certain exceptions. It also provided that violations would be punishable by a term of imprisonment not exceeding one year or a fine of \$1,000. This deleted section of the bill had an effective date of October 1, 2012.

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<sup>15</sup> E-mail from Kathleen McCharen, EDR, to Senate Criminal Justice staff, dated October 21, 2011 (on file with the committee).

B. Amendments:

**IX. None.**

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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