

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1241

Agriculture

SPONSOR(S): Troutman

TIED BILLS:

IDEN./SIM. BILLS: SB 2312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	18 Y, 0 N, As CS	Kaiser	Reese
2) General Government Policy Council	17 Y, 0 N	Kaiser	Hamby
3) Natural Resources Appropriations Committee	8 Y, 0 N, As CS	Bellflower	Lachat
4)			
5)			

SUMMARY ANALYSIS

CS/HB 1241 addresses various issues relating to agriculture. The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by said person in the state, from obtaining a local business tax receipt.

The bill amends the definition of "farm tractor" to clarify that a farm tractor, whether it be an actual tractor, ATV, John Deere Gator, or other utility vehicle, may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes. The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards and authorizes it to impose administrative fines¹ or issue a written notice or warning for violations.

The bill reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law². And lastly, the bill amends Chapter 823, F.S., to mirror the language in Chapter 403, F.S., regarding the materials used in agricultural production allowed to be burned in the open.

This legislation appears to reduce state revenues by \$23,730 in FY 2009-10 and by \$24,441 in FY 2010-11. The mandate provision appears to apply because the bill prohibits local governments from imposing business taxes on persons involved in the sale of agricultural products that were grown in the state by said person. The Revenue Estimating Conference has determined that the fiscal impact is insignificant. The effective date of this legislation is July 1, 2009.

¹ Administrative fines may not exceed \$5,000 per violation.

² Sections 604.15-604.34, F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:

Florida law³ exempts any natural person from obtaining an occupational license to sell agricultural products⁴ that were grown in the state by said natural person. While the statutes provide a definition for "person," no definition is provided for "natural person." Hence, the statute is interpreted differently in different counties in regards to the exemption. The bill strikes the word "natural" to exempt any "person" from obtaining an occupational license.

Section 2:

Florida law provides various exemptions from obtaining a driver's license, one of those being "...any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway."⁵ Currently, a farm tractor is defined in statute⁶ as "a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Section 3:

Current Florida law does not recognize tomato "repackers" in the definition of "food establishment." The bill adds "repackers" to the definition.

³ Section 205.064, F.S.

⁴ Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.

⁵ Section 322.04 (1)(b), F.S.

⁶ Section 322.01(20), F.S.

Section 4:

During the 2007 legislative session, CS/HB 651 was enacted authorizing the Division of Food Safety (division) within the Department of Agriculture and Consumer Services (department) to perform food safety inspections, under the Tomato Good Agricultural Practices (T-GAP) inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. Over the past two years, the division has been working with the Florida tomato industry to create and implement good agricultural practices, guidelines and standards, as well as to implement an annual audit and inspection program to ensure compliance.

The bill authorizes the department to adopt rules to establish food safety standards to protect the consuming public from tainted tomatoes. The bill requires the rules to be based on federal requirements, available scientific research, generally accepted industry practices, and recommendations of food safety professionals. The rules must apply to all aspects of tomato production, harvesting and (re)packing for sale for human consumption by a tomato farm, tomato greenhouse or tomato packinghouse or repacker in the state. Topics that may be covered by the rules include:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes;
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The bill authorizes the department to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards. The department is granted the authority to impose administrative fines⁷ or issue a written notice or warning for compliance violations.

The bill affirms that a person documenting compliance with the department's rules, T-GAPs and tomato best management practices (BMPs) is considered to be in compliance with state food safety standards unless a violation or noncompliance can be shown through inspections. The bill also gives the department rule-making authority to implement the BMP program.

Section 5:

The department currently has the authority⁸ to act as an adviser to producers and distributors and to assist them in the economical and efficient distribution of their agricultural products through a cooperative effort. The bill gives the department rule-making authority to establish BMPs for agricultural production and food safety.

Section 6:

The bill cross-references the duties of the department with regards to food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers as it relates to the duties of the Division of Fruits and Vegetables.

⁷ Administrative fines may not exceed \$5,000 per violation.

⁸ Section 570.07(10), F.S.

Section 7:

The Florida License and Bond Law (law)⁹ was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 legislative session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term “agricultural products” 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 product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers.

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 they have requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

Section 8:

There are currently two sections in statute¹⁰ that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning. The bill amends the language in Chapter 823, F.S., to mirror the language in Chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 205.064, F.S.; revises exemption eligibility for a local business tax receipt.

Section 2: Amends s. 322.01, F.S.; revises the definition of “farm tractor.”

Section 3: Amends s. 500.03, F.S.; revises the definition of “food establishment.”

Section 4: Creates s. 500.70, F.S.; provides definitions; allows rule-making authority; sets parameters for rules; authorizes the Department of Agriculture and Consumer Services to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations or vehicles being used to transport or hold tomatoes; authorizes the imposition of administrative fines and/or written notices for violations; and, providing a presumption of compliance under certain circumstances.

Section 5: Amends s. 570.07, F.S.; allows rule-making authority.

Section 6: Amends s. 570.48, F.S.; revises the duties of the Division of Fruit and Vegetables.

Section 7: Amends s. 604.15, F.S.; revises the definition of “agricultural products.”

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2009.

⁹ Sections 604.15-604.34, F.S.

¹⁰ ss. 403.707(2)(e) and 823.145, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 09-10) <u>Amount/FTE</u>	(FY 10-11) <u>Amount/FTE</u>	(FY 11-12) <u>Amount/FTE</u>
1. Revenues:			
Recurring			
Agricultural Products Dealers License (General Inspection Trust Fund)	\$ (23,730)	\$ (24,441)	\$ (25,175)
2. Expenditures:			
None			

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
 Indeterminate
2. Expenditures:
 Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with business tax receipts by local governments.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, it will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

The Division of Marketing (division) within the department reports that there are approximately 577 tropical foliage dealers who are currently licensed by the division and a possible 350 dealers who are prospective licensees. Of the 577 who have tropical foliage licenses, only 52 deal in tropical foliage alone. By exempting tropical foliage dealers from the definition of agricultural products, the division will experience a loss of revenue in the General Inspection Trust Fund of \$24,441 for FY 2010-11 and a loss of \$25,175 for FY 2011-12. The loss of revenue is insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision may apply because the bill prohibits local cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom. The Revenue Estimating Conference has not yet determined if the fiscal impact is significant or if an exemption to the mandate provision applies.

In the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida constitution prohibits the legislature from enacting, amending or repealing a law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise

revenues in the aggregate, as such authority exists on February 1, 1989, unless the law is approved by a two-thirds vote of the membership of each house.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority to:

- Establish food safety standards to protect public safety from tainted tomatoes;
- Establish tomato good agricultural practices and tomato best management practices;
- Administer the food safety act as it relates to tomatoes; and,
- Establish best management practices for agricultural production and food safety.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over \$97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. During the 2007-08 FY, the department processed claims totaling \$180,266 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Agriculture and Natural Resources Policy Committee adopted two amendments to HB 1241. **Amendment 1** is a technical amendment, adding an "s" to the word "practice" on line 100 of the bill.

Amendment 2 clarifies that administrative fines imposed for violations of tomato food safety standards apply only to section 500.70, F.S., rather than to Chapter 500, F.S. Also, at the request of the Department of Agriculture and Consumer Services, the words "as guidance" are removed from the bill as they relate to the tomato industry using tomato good agricultural practices and tomato best management practices.

On March 31, 2009, the Natural Resources Appropriations Committee adopted one amendment to HB 1241. The amendment allows small farmers to sell their product at road-side stands and at farmer's markets in an amount that does not exceed two 25 pound boxes per customer.