

May 11, 2011

Session Wrap-Up

The 2011 legislative session ended in the wee hours of the morning on Saturday, May 7. Its last hours were peppered with drama and conflict. Deals were made and broken; leadership was challenged. When all was said and done, however, it was one of the best sessions for business in recent memory.

Florida Farm Bureau Federation thanks our members who contacted legislators and their staffs on our issues. Your volunteer leadership service on behalf of agriculture gave us a powerful voice at our state capitol.

Below are highlights of legislation of importance to the agricultural industry.

Bills that Passed

Veto Override

During the third week of the session both houses agreed to override Gov. Charlie Crist's veto of last year's general ag bill. This legislation contained several important issues:

- Prohibits local governments from enforcing duplicate regulations on ag lands. It also prohibits counties from imposing tax assessments or fees for storm water management on ag lands with a discharge permit or where Best Management Practices (BMPs) are implemented;
- **Exempts** nonresidential farm buildings and fences from any type of permits or fees;
- Requires anyone applying for a land use permit, building permit or occupancy permit for non-agricul-

tural land adjacent to agricultural land to sign a waiver indicating they understand that the agricultural property includes an ongoing operation which produces odors, noise, dust and other effects;

- **Exempts** farmers and ranchers from a local business tax (formerly known as an occupational license). Presently, in some counties persons are exempt but not companies or corporations;
- Allows the **burning of all plastics**, including rubber tubing, used on farms;
- **Exempts** from driver's license requirements operators of motor vehicles used primarily on a farm (implements, all-terrain vehicles, utility vehicles, golf carts, etc.) and operated on state roads only incidentally; and
- Allows the Florida Department of Agriculture and Consumer Services (FDACS) to adopt rules **establishing comprehensive BMPs** for agricultural production and food safety.

The House approved the override unanimously. The Senate soon followed with an overwhelming endorsement. The provisions of the bill became effective immediately.

Property Rights

HB 701 by Rep. Eric Eisnagle; SB 998 by Sen. David Simmons

- Allows landowners to bring a claim against a government entity based on when the law was applied, not when it was enacted;
- Provides that a moratorium on a development that is in effect for longer than one year is not a tempo-

rary impact to real property and may constitute an inordinate burden;

- Changes the notification period from 180 days to 120 days;
- Replaces the term “ripeness” with language specifying when the prerequisites for judicial review are met; and
- Waives **sovereign immunity** for purposes of the act.

Pending approval by the Governor, this legislation becomes effective July 1.

Wetlands/Ag Exemption

HB 421 by Rep. Leonard Bembry; SB 1174 by Sen. Gary Siplin

- Revises exemption for agricultural-related activities to include certain impacts to surface waters and wetlands; clarifies purpose of such activities and limits applicability of exemption;
- Provides **exclusive authority** to FDACS to determine whether certain activities qualify for agricultural-related exemption under specified conditions, retroactive to 1984;
- Requires memorandum of agreement between FDACS and the water management districts;
- Provides exemption from mitigation requirements for converted agricultural lands under certain conditions; and
- Revises the definition of the term “**agricultural activities**” to include cultivating, fallowing and leveling, as well as specified practices and standards, and provides for certain impacts to surface waters and wetlands.

Pending approval by the Governor, this legislation becomes effective July 1.

Florida Department of Agriculture and Consumer Services

HB 7215 by Rep. Steve Crisafulli; SB 2076 by Senate Agriculture Committee

- Deletes provisions establishing the **Division of Dairy** within the department and transfers its responsibilities to the Division of Food Safety as part of a departmental reorganization;
- Redefines the term “agricultural purposes” as it relates to the assessment of land classified as agricultural by the property appraiser to include all forms of farm products as defined in s. 823.14(3);
- Requires certain persons who produce, harvest, pack or repack tomatoes to register each location of a tomato farm, tomato greenhouse, tomato packing-house or tomato repacker by Aug. 1 and authorizes the department to set a registration fee;
- Creates the **Office of Energy and Water** within the Department;
- Gives FDACS **exclusive authority** to regulate the sale, composition, packaging, labeling, distribution and formulation of fertilizer;
- Exempts local government ordinances adopted before July 2011 regarding the sale of fertilizer from the above provision;
- Authorizes the Commissioner of Agriculture to **certify the dissolution or discontinuance** of a soil and water conservation district without the review or recommendation of the Soil and Water Conservation Council under certain circumstances;
- Provides penalties for the theft of bee colonies of registered beekeepers;
- Redefines the term “farmer” to include a person who grows or produces honey; and
- Redefines the term “**farm theft**” to include the unlawful taking possession of equipment and associated materials used to grow or produce certain farm products.

Pending approval by the Governor, this legislation becomes effective July 1.

Florida Department of Agriculture and Consumer Services

SB 2122 by Senate Budget Committee

- Renames the Division of Forestry as the Florida Forest Service;
- Deletes provisions establishing the Division of Dairy within the department and transfers its responsibilities to the Division of Food Safety as part of a departmental reorganization;
- Makes **organizational and operational changes** within the Department of Citrus;
- **Caps the tax rate** for boxes of grapefruit, oranges for use in fresh form, tangerines and hybrid citrus products at the rate in effect on May 1, 2011; and
- **Caps the tax rate** for boxes of oranges for use in processed form at 25 cents.

Pending approval by the Governor, this legislation becomes effective July 1.

Healthy Schools for Healthy Lives Act

SB 1312 by Sen. Gary Siplin, HB 7219 by House State Affairs Committee

- Transfers the administration of school food and nutrition programs from the Department of Education to FDACS;
- Allows FDACS to administer the USDA child food and nutrition programs; and
- Creates the Healthy Schools for Healthy Lives Council within FDACS.

Upon approval by the Governor, this legislation becomes effective immediately.

Growth Management

HB 993 by Rep. Ken Roberson reverses the state's "**burden of proof**" requirement so that challengers must provide proof of potential harm.

HB 7001 by House Community and Military Affairs Subcommittee re-enacts the growth management portions of SB 360 that were thrown out by Circuit Judge Charles A. Francis in August 2010.

HB 7207 by Rep. Gary Aubuchon is a sweeping revision of growth management law which includes, but is not limited to, the following:

- Removes requirements in state law that developers pay for roads, schools and parks, which would instead become optional for cities and counties to require;
- Removes the twice-per-year limit on local governments to make comprehensive plan changes;
- Revises the small scale amendment process; revises the rural land stewardship program;
- Clarifies and broadens the window for permit extensions; and
- Prohibits local governments from having **local referenda** for local comprehensive amendments.

Unemployment Benefits

HB 7005 by Rep. Doug Holder; SB 728 by Sen. Nancy Detert

- Cuts the duration of state **unemployment benefits** based on the strength of Florida's economy;
- Reduces the maximum duration of state benefits from 26 weeks to 23 weeks if the unemployment rate remains above 10.5 percent;
- Decreases **duration of benefits** if the jobless rate drops below 10.5 percent;
- Caps duration of benefits at 12 weeks if unemployment rate is five percent or less.

The unemployment rate in Florida in March was 11.1 percent. As of today, this measure would save business owners about **\$18 per employee**. This figure may change when this program goes into effect in 2012.

Corporate Tax

HB 7185 by Rep. Steve Precourt; SB 1998 by Senate Subcommittee on Finance and Tax

This legislation increases the current \$5,000 corporate **tax exemption to \$25,000**, which eliminates the tax for almost half of the 31,000 businesses that currently pay it. This legislation is effective immediately and will be retroactively applied as of Jan. 1.

Constitutional Amendment Reform

HB 1355 by Rep. Dennis Baxley; SB 1504 by Sen. David Simmons

A provision in the elections bill reduces the time that paid signature gatherers have to collect signatures for citizen initiatives from four years to two.

Budget

Despite facing the largest deficit in recent history, both FDACS and the University of Florida's Institute of Food and Agricultural Sciences fared relatively well in the final budget.

Overall, more than \$300 million in tax cuts were approved, including a return of the three-day sales tax holiday. A large portion of the tax cuts will come from a mandate to reduce the state's water management districts' property tax revenues by 30 percent.

The budget includes no new money for the Florida Forever land-buying program. However, \$29.9 million will be dedicated to Everglades restoration (\$50 million was allotted in 2009).

Under an agreement reached on May 4 by budget negotiators, the Governor's Energy Office was transferred to FDACS.

Bills That Failed

Immigration

SB 2040 by Sen. Anitere Flores and HB 7089 by Rep. William Snyder

Immigration reform was one of the most hotly battled issues of the legislative session. The House took a hard-line approach early on, mandating the use of E-Verify for all employers and enacting stringent enforcement requirements, flirting with provisions of the controversial and contested Arizona law.

The Senate had difficulties reaching consensus on the issue: mandatory E-Verify was added and then deleted. An attempt to add it once more was defeated on the Senate Floor.

The House felt that the version ultimately passed by the Senate was not strong enough and refused to take up the issue.

FFBF is grateful to all our legislators who helped defeat the passage of a mandatory E-Verify measure. **While many others were involved, Sens. J.D. Alexander and Anitere Flores led the charge in the Senate. In the House, Reps. Steve Crisafulli, Denise Grimsley, Seth McKeel, Greg Steube and Ben Albritton were instrumental in protecting Florida from the negative consequences of this provision.**

Permitting

HB 991 by Rep. Jimmy Patronis; SB 1404 by Sen. Greg Evers

Provisions in this legislation would have had the following effects:

- Streamlined the state permitting process to reduce lawsuits and delays;
- Created, amended and revised numerous provisions to development, construction, operating and building permits;

- Prohibited a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allowed an applicant 90 days to respond to requests for additional information;
- Created incentive-based permitting;
- Required the Florida Department of Environmental Protection (FDEP) to establish reasonable zones of mixing for discharges into specified waters;
- Specified that the renewable fuel standard does not prohibit the sale of unblended fuels for exempted uses;
- Established in statute and revised certain rules related to the application and interpretation of uniform mitigation assessment methodology;
- Provided for an expanded state programmatic general permit;
- Provided for incentive-based environmental permitting and limited grounds for revoking a permit; and
- Authorized a general permit for a surface water management system under 10 acres without agency action.

Energy

SB 2078 by Senate Communications, Energy and Public Utilities Committee; HB 7217 by House Energy and Utilities Subcommittee

Provisions in this legislation would have had the following effects:

- Allowed an investor-owned utility to recover the costs of renewable energy projects, if the following conditions were met:

At least 25 percent of the total renewable energy capacity were from renewable energy resources other than solar energy; and

Total cost for a utility in any calendar year did not exceed two percent of the utility's total revenue from retail sales of electricity for the calendar year 2010.

- Required each utility receiving cost recovery to report annually on the costs and benefits of the projects, including the number of jobs created;
- Created the Florida Energy Office as an independent office within FDEP to be the principle economic development organization for the state on matters relating to renewable, alternative or clean energy; and
- Transferred the Florida Energy and Climate Commission to the Florida Energy Office.

Fertilizer

SB 606 by Sen. Greg Evers

Provisions in this legislation would have had the following effects:

- Deleted legislative findings relating to the implementation by local governments of certain fertilizer management practices;
- Deleted authority for certain counties and municipalities to adopt fertilizer management practices more stringent than standards of a specified model ordinance;
- Required FDACS to regulate the sale, composition, formulation, packaging, use, application and distribution of fertilizer; and
- Authorized such regulation of fertilizer by the department.

HB 457 by Rep. Clay Ingram

Provisions in this legislation would have had the following effects:

- Revised legislative findings relating to implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;

- Revised the authority of county and municipal governments to adopt fertilizer standards that are in addition to or more stringent than standards of the model ordinance;
- Required county and municipal governments to report the adoption of such standards to FDEP;
- Required FDACS to regulate the sale, composition, packaging, labeling, retail and wholesale distribution and formulation of fertilizer; and
- Exempted fertilizer ordinances of a county or municipal government adopted before July 1.

Numeric Nutrient Criteria

HB 239 by Rep. Trudi Williams; SB 1090 by Sen. Charlie Dean

Provisions in this legislation would have had the following effects:

- Rejected the U.S. Environmental Protection Agency's faulty "one size fits all" science and directed FDEP to ensure the criteria adopted by the state have a cause and effect relationship rather than the statistical approach used by EPA;
- Revised dissolved oxygen criteria by 2012; and
- Set forth a defined water use classification to better focus on the waters that need improvement and tar-

get the degree of improvements specifically to the water body's use.

House Bill 1401

This was a memorial by Reps. Greg Steube and John Wood urging Congress to keep the EPA from overextending its mandate and to direct EPA not to intrude into Florida's previously approved clean water program. The memorial passed the House but was never heard in the Senate.

Audio or Video Recording on Farms

SB 1246 by Sen. Jim Norman

This bill would have prohibited people from entering onto a farm and making any audio record, photograph or video record at the farm without the owner's written consent.

Septic Tank Inspections

HB 13 by Rep. Marti Coley and SB 1698 by Sen. Charlie Dean

These measures would have eliminated the septic tank inspections and associated fees created by SB 550 last year. Although this legislation did not pass, language was written into the budget that delays implementation of the program, allowing time for corrective legislation to be passed next year.

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