

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 PCB AG 05-02 Dealers in Agricultural Products

SPONSOR(S): Agriculture Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	8 Y, 0 N	Reese	Reese
1) Agriculture & Environment Appropriations Committee	9 Y, 0 N	Davis	Dixon
2) State Resources Council	9 Y, 0 N, w/CS	Reese	Hamby
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Florida Agricultural License and Bond 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. It helps assure that transactions are recorded properly and that the buyer is financially responsible. Having not been revised in many years, the law was selected for interim review by the Agriculture Committee staff.

The bill contains a number of changes to enable the license and bond program to better serve Florida's agricultural industry and to make the program more self-sufficient. The bill: adds, revises and clarifies several definitions to better fit today's agriculture and its practices; removes tropical foliage from the list of exemptions and adds timber and timber by-products to the list; changes the existing "cash only" exception to include United States cash currency or cash equivalents such as money orders, cashier's checks, wire transfers, or debit cards; specifies information every dealer in agricultural products must provide to the Department of Agriculture and Consumer Services (department) prior to engaging in business; requires a surety company to give the department a 30-day written notice of cancellation by certified mail before a bond can be cancelled; increases maximum license fees; specifies that no bond or certificate of deposit may be in an amount less than \$5,000 and that the bond or certificate of deposit becomes the property of the department; and increases the surety bond or certificate of deposit furnished to the department in an amount equal to twice the dollar amount of agricultural products handled for Florida producers, their agents, or representatives, during the month of maximum transaction during the preceding 12 month period.

In addition, the bill: allows the department to issue a conditional license to an applicant who is unable to provide a single bond or certificate of deposit in the full amount required; clarifies the conditions under which a complaint may be filed against a dealer; increases the minimum amount for filing a complaint from \$250 to \$500 and requires the complainant to pay a \$50 reimbursable filing fee to the department; allows dealer to dealer complaints, provided all producer claims are paid first; increases the maximum fine for violations from \$1,000 to \$2,500; increases the continuing violation fine from \$50 to \$100 per day; and increases the late payment penalty from a maximum of \$35 to a maximum of \$100.

Section II. of this analysis contains details of the fiscal impact to the department and to the private sector (agricultural producers and dealers in agricultural products).

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

STORAGE NAME: h1231d.SRC.doc

DATE: 4/25/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill contains increases in licensure fees to aid in covering the costs of administering the agricultural license and bond program.

B. EFFECT OF PROPOSED CHANGES:

Present situation: Since its enactment in 1941, the Florida Department of Agriculture and Consumer Services (department) has administered the Florida Agricultural License and Bond Law (law), ss. 604.15-604.34, F.S. The law's purpose is to facilitate the marketing of Florida agricultural products by encouraging a better understanding between product buyers and sellers and by providing a marketplace that is relatively free of unfair trade practices. Due to the perishable nature of many of Florida's agricultural products and the methods of transportation and marketing, such protection is very important to the state's agricultural industry. It helps assure that transactions are recorded properly and that the buyer is financially responsible. In short, the law is, in effect, to help assure that producers of those products covered by the law receive proper accounting and payment for the products they sell.

Existing law provides that soliciting, handling, or negotiating agricultural products from or for a Florida producer, or a producer's agent, must be licensed and bonded. Sections 604.15-604.34, F.S., require dealers in agricultural products buying directly from a Florida producer or the producer's agent and paying for the product in any form other than cash currency to be licensed with the department. To secure a license, a dealer must:

- File a properly completed application,
- Pay the required license fee,
- Post an adequate surety bond or certificate of deposit.

The surety bond must be payable to the department, and certificates of deposit must be purchased in the dealer's name with the proceeds assigned to the department. The amount must be equal to the dealer's largest month's purchases from Florida producers; however, it cannot exceed \$100,000 or be less than \$3,000. License fees range from \$65 to \$265 depending on the volume of business transacted by the dealer. The bond or certificate of deposit is in place to establish the financial responsibility of the dealer and to assist in final payment for the product.

The law covers all agricultural products except tobacco, sugar cane, citrus and tropical foliage. Citrus is exempt because citrus dealers are covered under the Florida Citrus License and Bond Law found in chapter 601, F.S. Exceptions to the law's requirements are 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, and retail operations purchasing less than \$1,000 in product per month from Florida producers.

Dealers are required by law to account quickly and accurately for the products purchased from or handled for Florida producers. If a producer or the producer's agent has not been properly paid by a dealer, a claim may be filed with the department against the dealer's license. There is no fee for filing a complaint; however, claims must be filed with the department within six months of the date of sale and must involve at least \$250. If the complaint is deemed valid, a letter is sent from the department to the respondent. After presentation of all facts in the case, the department may issue a final order. Once a final order is issued, there is a 30 day appeal period. According to the department, few appeals are filed.

If it is found that the dealer does not comply with the order to pay, the department will order the bonding company to pay over to the department out of the bond posted by the surety. In cases involving certificates of deposit, the financial institution issuing the certificate of deposit is ordered to pay over the proceeds provided for in the Assignment of Certificate of Deposit. In instances where the bond or certificate of deposit is not large enough to pay all claims against the dealer, funds are distributed pro rata among the claimants.

Proposed changes: The following proposed changes to the Florida License and Bond Law are the result of a review conducted jointly by the House Agriculture Committee staff, department staff, and agriculture industry representatives. The bill amends ss. 604.15-604.30, F.S., by:

- Changing the definition of the term “agricultural products” to include sod, tropical foliage, hay, horticulture and any other non-exempt agricultural products produced in the state.
- Revising the definition of “dealer in agricultural products” to include partnerships, corporations, or other business entities.
- Removing tropical foliage from the list of exemptions and adding timber and timber by-products (as defined in s. 591.17, F.S.).
- Clarifying the definition of “net return basis”.
- Adding definitions for “producer’s agent” and “negotiating broker”.
- Changing the existing “cash only” exemption to read, “. . . United States cash currency or cash equivalents such as money orders, cashier’s checks, wire transfers, or debit cards.”
- Requiring every dealer in agricultural products to provide the mailing address of the dealer’s primary location prior to engaging in business and to notify the department of any changes in the address of the primary location; also, to provide the mailing address of all principals.
- Requiring a surety company to give the department a 30-day written notice of cancellation by certified mail before a bond can be cancelled.
- Increasing the maximum license fee from \$300 to \$500.
- Increasing the maximum license fee for additional locations to \$100.
- Clarifying that no bond or certificate of deposit may be in an amount less than \$5,000 and that the bond or certificate of deposit becomes the property of the department.
- Increasing the surety bond or certificate of deposit furnished to the department in an amount equal to twice the dollar amount of agricultural products handled for Florida producers, their agents, or representatives, during the month of maximum transaction during the preceding 12 month period.
- Allowing the department to issue a conditional license to an applicant who is unable to provide a single bond or certificate of deposit in the full amount required.
- Clarifying the conditions under which a complaint may be filed against a dealer in agricultural products.

- Increasing the minimum amount for filing a complaint from \$250 to \$500 and requiring the complainant to pay a \$50 filing fee to the department. If the complainant is successful in proving the claim, the \$50 is reimbursed.
- Allowing the inclusion in a complaint of any additional charges necessary to effectuate the sale; placing the burden of providing accurate, up-to-date mailing information on the dealer; and allowing the department to provide all information to the most recent address of record.
- Allowing dealer to dealer complaints, provided all producer claims are paid first.
- Increasing the maximum fine for violation of any of the law's provisions from \$1,000 to \$2,500.
- Increasing the continuing violation fine from \$50 to \$100 per day.
- Increasing the late payment penalty from "not to exceed \$35" to "not to exceed \$100."

C. SECTION DIRECTORY:

Section 1. Amends s. 604.15, F.S., revising definitions; expanding the list of products covered by the law; defining certain terms.

Section 2. Amends s. 604.16, F.S., revising exceptions to provisions regulating dealers.

Section 3. Amends s. 604.18, F.S., relating to applications for dealer licensure; requiring dealers to provide mailing and location address information; requiring dealers to provide certain information relating to the dollar amount of business done or to be done.

Section 4. Amends s. 604.19, F.S., providing requirements relating to cancellation of a bond or certificate of deposit; increasing license fees and delinquent renewal penalties.

Section 5. Amends s. 604.20, F.S., providing a calculation for the amount of a bond or certificate of deposit; adding requirements relating to bond or certificate of deposit assignment or agreement; authorizing the department to issue a conditional license under certain conditions.

Section 6. Amends s. 604.21, F.S., increasing the minimum claim amount and requiring a complaint filing fee; providing requirements for submission of a complaint and payment for multiple claims; authorizing a dealer in agricultural products to file a complaint against another dealer in agricultural products; limiting the time a complaint may be held in abeyance; authorizing a review of a final order; clarifying distribution of bond or certificate of deposit proceeds.

Section 7. Amends s. 604.22, F.S., revising recordkeeping requirements of licensees; clarifying application of provisions.

Sections 8. and 9. Amend ss. 604.23 and 604.25, F.S., clarifying application of provisions.

Section 10. Amends s. 604.30, F.S., clarifying that a violator of provisions regulating dealers in agricultural products may be a person, partnership, corporation, or other business entity; increasing the maximum administrative fine and the fine for continued violation of an administrative order.

Section 11. Provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>2005-06</u>	<u>2006-07</u>
Revenues:		
Dept. of Agriculture & Consumer Services		
Recurring – General Inspection TF (GITF)	\$370,335.00	

See Fiscal Comments for revenue calculation information.

Expenditures:

Dept. of Agriculture & Consumer Services		
Recurring – General Inspection TF		
Salaries and Benefits:		
1 Financial Examiner Analyst II	53,961.43	
2 Financial Examiner Analyst I	88,477.26	
(@\$44,238.63 x 2FTE)		
1 Administrative Assistant I	<u>36,066.16</u>	
Total Salaries & Benefits	\$178,504.85	
Expense:		
3 Professional Expense Packages @ \$9,743	\$ 29,229.00	
1 Support Staff Expense Package @ \$8,150	8,150.00	
Human Resources Services –		
4 FTE @ \$389 Cat 107040	1,556.00	
AGMIC – Additional computer system		
Maintenance	12,000.00	
Non-Recurring		
3 Professional OCO Packages @ \$1,800	54,000.00	
1 Support Staff OCO Package @ \$2,100	2,100.00	
Non-Operating Costs – General Inspection TF		
Administrative/indirect	\$ 20,015.00	
General Revenue Service Charge @ 7.3%	<u>27,034.46</u>	
Total Non-Operating Costs	\$ 47,049.46	
 <u>Grand Totals</u>		
Costs	\$283,989.31	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill appears to have no impact to local government revenues.

2. Expenditures:

This bill appears to have no impact to local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed changes to the Florida License and Bond Law will result in increased fees, penalties and fines. According to the department, these changes will also result in a greater than 50 percent increase in bond coverage and protection for the Florida producer.

D. FISCAL COMMENTS:

Revenues provided in this fiscal information were calculated as follows:

Bond Amount	Current Fees	Number of Fees Collected	Proposed Fees	Estimated # of Fees Collected	Additional Revenue
\$ 3,000 – 4,999	\$ 65	374			
5,000 - 9,999	135	338	170	947	160,990
10,000 - 14,999	195	187	230	249	20,805
15,000 – 100,000	265	1,043	300	1,387	139,705
Additional locations	50	2,255	100	2,255	112,750
Delinquent penalty	35	629	100	629	<u>40,885</u>
Total additional revenue					\$475,135

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

3. Other:

None

B. RULE-MAKING AUTHORITY:

The bill contains no grant of rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 20, 2005, the State Resources Council adopted amendments changing the minimum bond amount from \$3,000 to \$5,000.