

**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 General Government Appropriations Committee

BILL: CS/SB 22-C

INTRODUCER: General Government Appropriations Committee and Senator Alexander

SUBJECT: Department of Agriculture and Consumer Services

DATE: October 4, 2007 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Blizzard	DeLoach	GA	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
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 bill increases the annual fees for registration of commercial feed distributors who distribute feed in the state from a range of \$25 to \$2,500 to a range of \$40 to \$3,500. The fee is based on the number of tons of feed distributed in Florida during the previous year. The bill increases annual pesticide registration fees from \$250 to \$350. Additionally, the bill increases fertilizer inspection fees from \$.75 to \$1.00 per ton for fertilizer sold in the state, and increases the application fee cap for a food permit from \$500 to \$650. For Fiscal Year 2007-2008, the department estimates the increased fees will generate an additional \$1.6 million in recurring revenue in the General Inspection Trust Fund for the operation of the commercial feed, pesticide registration, and fertilizer inspection programs. For Fiscal Year 2008-2009, the department estimates an additional \$2.8 million in recurring revenue, which includes \$800,000 for conducting inspections of food establishments and retail food stores. This additional revenue reduces the need for general revenue funds to subsidize these programs.

The bill eliminates requirements that the Department of Agriculture and Consumer Services (department) purchase and distribute brucella vaccine to licensed Florida veterinarians and that

female dairy cows are to be vaccinated. The department estimates current expenditures of \$140,000 per year on the purchase, storage, and shipping of the vaccine. The absence of brucellosis over the last seven years and the extremely low level of bovine brucellosis in the United States has reduced the threat of this disease to Florida cattle and thus also reduced the need for vaccination. The bill also updates current law to conform to the most recent Code of Federal Regulation for the Brucellosis Program by eliminating required herd plans.

The bill amends the definition of “gift certificate” to provide that a certificate, gift card, stored value card, or similar instrument must be purchased and excludes manufacturer or retailer discounts and coupons. It eliminates the requirement that no consideration be given to the issuer of a gift certificate by a consumer in order for gift certificates provided as charitable contributions to be allowed to expire after three years. The bill eliminates the requirement that no consideration be given by the consumer in order for gift certificates provided as a benefit pursuant to an employee-incentive program to be allowed to expire after one year. A gift certificate would be permitted to have an expiration date if it is provided as part of a loyalty program or promotional program. The bill requires the department to enforce the restrictions on gift certificates as revised by this bill. These provisions are to be applied to all gift cards purchased and credit memos issued on or after June 28, 2007.

This bill substantially amends the following sections of the Florida Statutes: 487.041, 500.12, 501.95, 576.041, 580.041, and 585.155.

This bill repeals section 585.105 of the Florida Statutes.

## **II. Present Situation:**

### **Florida Pesticide Regulation**

All pesticide product brands offered for sale in Florida must be registered by the Department of Agriculture and Consumer Services. Chapter 487, F.S., the Florida Pesticide Law, provides regulation for the distribution, sale, and use of pesticide products in order to protect people and the environment from the adverse effects of pesticides.

The department issues an annual pesticide product brand registration that expires December 31 of the registration year and must be renewed by January 31 of the registration year. The annual registration fee is \$250 for each registered brand of pesticide.

Effective January 1, 2009, the department is authorized to issue biennial rather than annual pesticide registration renewals. Registrations issued in an odd-numbered year will be assessed a fee of \$500 per brand of pesticide. Registrations issued in an even-numbered year will be assessed a fee of \$250 per brand of pesticide and such registration will expire on December 31 of that year.

### **Fertilizer**

The department is charged with the enforcement and administration of Florida's Commercial Fertilizer Law, Chapter 576, F.S., and Chapter 5E-1, Florida Administrative Code. The Fertilizer

Law requires fertilizer companies that plan to market fertilizer in Florida to be licensed with the department and to show proof of a surety bond or certificate of deposit in the amount of \$1,000. All registered licensees pay an inspection fee of 75 cents per ton for mixed fertilizer and fertilizer materials, including an additional 50 cents per ton if the fertilizer contains nitrogen.

### **Commercial Feeds**

Commercial feed is the materials that are distributed for use as feed or for mixing in a feed for consumption by animals other than humans, with certain exceptions. The department is responsible for the enforcement and administration of the Florida Commercial Feed Law, Chapter 580, F.S., and Chapter 5E-3, Florida Administrative Code. A distributor of commercial feed must obtain a master registration and place on file, in the Feed Section of the Bureau of Compliance Monitoring, a copy of or a label for each brand of feed to be distributed in Florida.

Each distributor of commercial feed must annually obtain a master registration before distributing in Florida. The department furnishes a registration form which requires the distributor to state that the distributor will comply with all applicable laws and rules. The form must be completed and mailed to the department accompanied by a fee based on the tons of feed distributed in Florida during the previous year. If a distributor has been in business less than one year, the tonnage is estimated for the first year and based on actual tonnage thereafter. All registrations expire on June 30<sup>th</sup> of each year and must be renewed annually.

### **Food Permits**

The department's Division of Food Safety is responsible for assuring the public a safe, wholesome, and properly represented food supply through permitting and inspection of food establishments, inspection of food products, and performance of specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from the farm through processing and distribution to the retail point of purchase.

A food permit from the department is required of any person who operates a food establishment or retail food store, with certain exceptions. Persons operating minor food outlets are not required to have a food permit as long as the shelf space for prepackaged items does not exceed twelve linear feet. The application fee for a food permit is determined by department rule and may not exceed \$500 pursuant to s. 500.12, F.S.

Section 500.12(1), F.S., specifies that a food permit fee "shall be used solely for the recovery of costs for the services provided...." From Fiscal Year 2003-2004 to Fiscal Year 2004-2005, the Division of Food Safety experienced a \$54,000 revenue decrease in food permit fees. Food permit revenue decreased again in Fiscal Year 2005-2006 by \$95,000. In Fiscal Year 2006-2007, food permit revenue grew three percent, or approximately \$349,000. However, based on total revenues versus total expenditures relating to the Food Store Inspection Program, the division has been operating in a deficit status in the General Inspection Trust Fund for the past four fiscal years.

As costs to administer the program have increased, the division has raised permit fees to recover a majority of the program costs. Consequently, an increasing number of permitted food firms have reached the maximum \$500 fee assessment and, over time, differences in fees between permit categories have decreased. This trend has created an inequity between firms of greater food safety risk, which require more inspection resources, and firms of significantly less risk, which require fewer resources. Essentially, more firms are paying closely comparable fees despite differences in resources required to provide regulatory services.

### **Brucellosis Vaccinations**

One of the long term responsibilities of the department's Division of Animal Industry has been the administration of Florida's Brucellosis Eradication Program. The Cooperative State-Federal Brucellosis Eradication Program is administered under a Memorandum of Understanding between the appropriate agency in each of the states and the U.S. Department of Agriculture. This program includes all of the activities associated with detecting, controlling, and eliminating brucellosis from domestic livestock in the U.S.

Bovine brucellosis is a cattle disease that is near eradication in the U.S. after more than 50 years of efforts by state departments of agriculture, the U.S. Department of Agriculture, and the cattle industry. Florida has maintained "Brucellosis Class Free" status for seven years now and, except for specific geographic regions surrounding Yellowstone National Park, the remainder of the U.S. is also "Brucellosis Class Free."

Section 585.155, F.S., requires all female calves born in the state that are to be used for dairy breeding purposes to be vaccinated with an approved brucella abortus vaccine. In 2001, the law mandating vaccination of female beef cattle was changed and vaccination has continued on a voluntary basis. While brucellosis vaccination was critical in eradicating this disease in Florida, the absence of this disease over the last seven years and the extremely low level of bovine brucellosis in the U.S. has reduced the threat of this disease to Florida cattle and thus also reduced the need for vaccination.

Currently, each calf must be individually identified at the time of vaccination by tattoo, brand, or by an official vaccination ear tag in the right ear. Each owner of a herd must also enroll the herd in a program to determine whether the herd is infected with brucellosis.

Section 585.105, F.S., requires the department to purchase and distribute brucellosis vaccine to licensed Florida veterinarians at no charge. The department spends approximately \$140,000 per year on vaccine purchase, storage, and shipping.

### **Gift Certificates and Gift Cards**

Senate Bill 1638 was passed during the 2007 Legislative Session. It created s. 501.95, F.S., to require that a gift certificate or credit memo sold or issued for consideration in the state not have an expiration date, expiration period, or any post-sale charge or fee, such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The law created the following exemptions:

- A gift certificate may have an expiration date of not less than three years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date of not less than one year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, or sporting or fine arts event having a limited duration and if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or sporting or fine arts event.
- The prohibitions against expiration dates, expiration periods, or post-sale charges or fees do not apply to gift certificates or credit memos sold or issued by a financial institution, as defined in s. 655.055, F.S., (state-chartered banks and credit unions), or by a money transmitter, as defined in s. 560.103, F.S., if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

### III. Effect of Proposed Changes:

**Section 1** amends s. 487.041, F.S., to increase the annual pesticide registration fee from \$250 to \$350 for each registered brand of pesticide. Effective January 1, 2009, the department is authorized to issue biennial rather than annual pesticide registration renewals. This section increases the fee for biennial registrations, to be issued in an odd-numbered year, from \$500 to \$700 per brand of pesticide. Registrations issued in an even-numbered year will be assessed a fee of \$350 rather than \$250 per brand of pesticide and such registration will expire on December 31 of that year.

**Section 2** amends s. 500.12, F.S., to increase the maximum application fee that may be assessed for a food permit from \$500 to \$650.

**Section 3** amends s. 501.95, F.S., to exempt manufacturer or retailer discounts and coupons from the definition of "gift certificate." This will exempt such items from the prohibitions against expiration dates and post sale charges and fees such as dormancy and account maintenance fees. The bill eliminates the requirement that no consideration be given to the issuer of a gift certificate by a consumer in order for gift certificates provided as charitable contributions to expire after three years. It eliminates the requirement that no consideration be given by the consumer in order for gift certificates provided as a benefit pursuant to an employee-incentive program to be allowed to expire after one year. The bill permits a gift certificate to have an expiration date if it is provided as part of a loyalty program or promotional program. Current law prohibits expiration dates, unless the consumer did not pay for it, in which case, the gift certificate may expire after one year. The bill eliminates the requirement that a consumer pay the majority of funds for the purchase of a larger convention, conference, vacation, sporting event, or fine arts event in order for a gift certificate that is packaged with such event to be allowed to have an expiration date.

The bill requires the department to enforce the restrictions on gift certificates as revised by this bill, using the remedies in s. 501.142(3), (4), and (5). The available remedies are:

- Issuance of a notice of non-compliance pursuant to s. 120.695, F.S.;
- Imposition of an administrative fine not to exceed \$100 for each violation;
- Directing the person to cease and desist specified activity.

Any administrative proceeding that could result in an order imposing any of these penalties would be governed by ch. 120, F.S. Moneys recovered would be deposited in the General Inspection Trust Fund.

**Section 4** amends s. 576.041, F.S., to increase the fertilizer inspection fee from 75 cents to one dollar per ton for fertilizer sold in the state, with certain exceptions. The additional fee revenue will support costs associated with increased inspections and review by the department due to the increasing necessity of regulation of phosphorous and nitrogen content in fertilizers used in urban environments.

**Section 5** amends s. 580.041, F.S., to increase the annual fees on commercial feed, which are based on tons of feed distributed in Florida during the previous year, as follows:

Sales in Tons	Current Fee	Proposed Fee
Zero, up to and including 25	\$25	\$40
More than 25, up to and including 50	\$50	\$75
More than 50, up to and including 100	\$100	\$150
More than 100, up to and including 300	\$300	\$375
More than 300, up to and including 600	\$500	\$600
More than 600, up to and including 1,000	\$750	\$900
More than 1,000, up to and including 2,000	\$1,000	\$1,250
More than 2,000, up to and including 5,000	\$1,500	\$2,000
More than 5,000	\$2,500	\$3,500

**Section 6** amends s. 585.155, F.S., to eliminate the requirement that female dairy cows be vaccinated with brucella vaccine. The section adds electronic identification devices to the accepted means of identification for female cattle and eliminates required herd plans, in order to update current law to conform to the most recent Code of Federal Regulation for the Brucellosis Program.

**Section 7** repeals s. 585.105, F.S., to eliminate a requirement that the department purchase and distribute brucella vaccine to licensed Florida veterinarians. As with most states, veterinarians would be financially responsible for the purchase of the vaccine and could pass the cost to cattle owners.

**Section 8** provides that Section 3 of this act applies retroactively to all gift cards purchased and credit memos issued on or after June 28, 2007 (the day s. 501.95, F.S., became effective).

**Section 9** provides that this act shall take effect November 1, 2007, or upon becoming a law, whichever occurs later; however, if this act becomes law after November 1, 2007, it shall operate retroactively to November 1, 2007.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

This bill increases certain fees relating to commercial feed, pesticide registration, fertilizer inspections, and food safety permits. The Department of Agriculture and Consumer Services estimates the increase in the fee revenue to the General Inspection Trust Fund to be a total of \$1.6 million in Fiscal Year 2007-2008 and \$2.8 million in Fiscal Year 2008-2009 on a recurring basis. The service charge on the trust fund revenues will provide an estimated \$121,812 for Fiscal Year 2007-2008 and \$205,685 in Fiscal Year 2008-2009 to the General Revenue Fund.

B. Private Sector Impact:

The bill's fee increases would require the payment of \$1.6 million in additional fees in Fiscal Year 2007-2008 by the producers of pesticides, fertilizers, and feed in order to register and market their products in Florida and an additional \$400,000 in Fiscal Year 2008-2009.

The bill would require food firms the department regulates to collectively pay an estimated additional amount of over \$800,000 in annual food permit fees each fiscal year, beginning in Fiscal Year 2008-2009. Actual permit fees are scaled according to the food safety risk associated with each firm type, size, and complexity of firm operations and the average length of time necessary to complete a routine inspection within a firm category. With the increased maximum fee amount, permit fees would more accurately reflect the level of regulation each firm requires. The projected increases range from zero to \$150, depending on the individual firm type.

Taxpayers would benefit from the elimination of brucellosis vaccine expenses currently incurred by the state. The cost burden would be shifted from the state to the producers

who elect to vaccinate their cows. Veterinarians could purchase the vaccine through the normal distribution channels and would likely pass this cost to the cattle producer on a per animal basis. The cost of vaccine for each individual animal would be less than one dollar. If vaccination continued at current levels, the combined cost to all producers who requested vaccination of their cows would be less than \$62,000 annually. A majority of dairy cows are transported out of state prior to reaching vaccination age and thus the cattle industry would experience minimal impact from the bill.

**C. Government Sector Impact:**

For Fiscal Year 2007-2008, the department estimates the increased fees will generate an additional \$1.6 million in recurring revenue in the General Inspection Trust Fund for the operation of the commercial feed, pesticide registration, and fertilizer inspection programs. For Fiscal Year 2008-2009, the department estimates an additional \$2.8 million in recurring revenue, which includes \$800,000 in the food safety inspection program. This additional revenue reduces the reliance on general revenue funds to subsidize these programs. Proposed Committee Bill 8008-C reduces \$800,000 from general revenue to the General Inspection Trust Fund during Fiscal Year 2007-2008. The savings in general revenue is realized from the increases in the pesticide, fertilizer, and feed fees.

Increasing the permit fee cap in the food safety program will allow general revenue savings of \$400,000 in the 2008-2009 fiscal year.

The elimination of the brucella vaccine will result in a cost savings in the department's recurring expense budget. Proposed Committee Bill 8008-C includes a reduction of \$80,000 relating to the elimination of the brucellosis vaccine, and an additional \$15,000 relating to travel savings within the Division of Agriculture Environmental Services.

**VI. Technical Deficiencies:**

None.

**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.)

Committee Substitute for Senate Bill 22-C includes the following changes:

- Increases fees to support consumer protection activities within the Division of Agriculture Environmental Services in the Department of Agriculture and Consumer Protection. The bill also increases the fee for food store permits.



- Eliminates the requirement that female dairy cows be vaccinated with brucella vaccine and removes the requirement for the department to purchase and distribute the vaccine to veterinarians.
- Exempts manufacturer or retailer discounts and coupons from the definition of “gift certificate.”
- Eliminates the requirement that no consideration be given to the issuer of a gift certificate by a consumer in order for gift certificates provided as charitable contributions to expire after three years.
- Eliminates the requirement that no consideration be given by the consumer in order for gift certificates provided as a benefit pursuant to an employee-incentive program to be allowed to expire after one year.
- Permits a gift certificate to have an expiration date if it is provided as part of a loyalty program or promotional program.
- Eliminates the possibility of consumers to bring a civil action to enforce the provisions of this section, instead granting authority to the Department of Agriculture and Consumer Services to enforce the section.
- Provides that Section 3 of the bill applies retroactively to all gift cards purchased and credit memos issued on or after June 28, 2007.

B. Amendments:

None.