

STORAGE NAME: h1855.gg

DATE: April 14, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: HB 1855 (PCB AG 99-02a)

RELATING TO: Department of Agriculture and Consumer Services

SPONSOR(S): Committee on Agriculture, Representative Putnam & others

COMPANION BILL(S): SB 2066 (s) by Senator Thomas

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 10 NAYS 0
- (2) BUSINESS REGULATION & CONSUMER AFFAIRS (W/D)
- (3) FINANCE & TAX (W/D)
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

HB 1855 addresses a variety of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (department).

Many of the changes in the bill are of a technical nature. The definitions of "farm product" and "agricultural emergency" are clarified to more accurately state the original intent. A reference to a quorum for the Florida Agriculture Center and Horse Park Authority is deleted because it is duplicative in nature. References to the Consumer Products Testing Laboratory, which was dissolved last year, are removed. A name change, brought about by the United States Department of Agriculture (USDA) reorganization, is authorized. In regards to Withlacoochee and Goethe State Forests, the bill removes individual county names and inserts "each county in which a portion of the respective forest is located" to prevent any one county from losing revenue as the forests are expanded. The bill clarifies the definition of a legal fence.

More specifically, the bill clarifies information required on an antifreeze label, establishes product liability, and redefines the penalties for violating the antifreeze act.

The bill deletes the requirement for the weights and measures program to be fully funded out of the General Inspection Trust Fund (GITF).

A Pest Exclusion Advisory Committee is created to look at plant and animal pest infestations, both present and future, and offer solutions and recommendations, in report form, to the Commissioner of Agriculture, Governor, Speaker of the House of Representatives, and President of the Senate by January 1, 2001.

The bill restricts the proximity and dates of operation of temporary amusement rides to public fairs and expositions, except with the written consent of the affected fair association. The bill requires public fairs and expositions to forward a copy of the application for permit to fair associations within 50 miles of the site of a proposed fair when application is presented to the department. The department is given authority to determine which, if any, fairs or expositions may compete with one another. The bill declares public fairs and expositions exempt from special assessments.

The bill expands the duties of the Division of Fruit and Vegetables to certify and license inspectors when federal law provides no mandate for licensing and certifying inspectors.

The bill allows owners of amusement rides to submit copies of current manufacturer's operating instructions to the department only upon the department's request. It also prohibits bungee catapaulting or reverse bungee jumping. The length of time between the execution of the Affidavit of Nondestructive Testing (NDT) and the time the inspection is done and the permit is issued is reduced to 90 days. The department now has the option of adopting rules to cover the expenditures associated with the Bureau of Fair Rides. And lastly, amusement ride owners are required to post signs at patron entrances to advise or warn of age, size, and health restrictions, weight limits or other special considerations recommended by the manufacturer.

And lastly, the bill provides relief from prosecution for prohibited acts relating to killing or aggravated abuse of registered breed horses or cattle resulting from weather conditions or other acts of God, providing the person is otherwise in compliance.

This legislation has no significant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Antifreeze Act

Presently, if a consumer is defrauded by an antifreeze product, the department has no recourse but to go after the original registrant, which is not always the person responsible for defrauding the consumer. The statutes currently allow the department to suspend or revoke the registration of any person who violates or fails to comply with the provisions of this act. In addition, the department may levy a fine not to exceed \$5,000 per violation.

Weights and Measures Program

Section 531.54, F.S., requires the weights and measures program to be fully funded out of the General Inspection Trust Fund.

Agricultural Emergency Eradication Trust Fund

The current definition for an agricultural emergency is defined as an animal or plant disease, insect infestation, or plant or pest endangering or threatening the horticultural, aquacultural, "and" agricultural interests of the state.

Division of Standards

The statutes include a reference to the Consumer Products Testing Laboratory which was dissolved in 1998.

Florida Agriculture Center and Horse Park Authority

Currently in the statutes, there are duplicative references to rules of procedure for conducting meetings for the Authority.

Withlacoochee and Goethe State Forests

For the purpose of distribution of gross receipts, the statutes currently list, by name, each county containing a portion of the Withlacoochee or Goethe State Forests.

Agricultural Commodity Insect Control

The statutes include a reference to the "Agricultural Stabilization and Conservation Service," which has been renamed by the USDA.

Public Fairs and Expositions

Presently, temporary amusement ride owners not affiliated with a fair association but operating within 5 miles of and within 30 days before or during any public fair or exposition are taxed \$1000 per day. When application for permit is made to the department to hold a fair, other fair associations in the area are not notified.

Amusement Rides

Under existing law, amusement ride owners are required to provide the department with a copy of the manufacturer's current recommended operating instructions, as well as any other written information in the owner's possession regarding the safety, operation, or maintenance of the amusement ride. Bungy catapulting and reverse bungy jumping are currently permitted in the state.

The department is required to establish, by rule, fees to cover 100 percent of all costs and expenditures associated with the Bureau of Fair Rides Inspection. Currently, patron advisory signs are only required to be posted when required by the manufacturer. So written, the law allows the amusement ride owner to submit an Affidavit of Nondestructive Testing (NDT) no earlier than 60 days prior to filing the application for the annual permit. So long as the old permit, NDT, and insurance do not expire, the inspection and permitting can be delayed for up to a year.

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B. EFFECT OF PROPOSED CHANGES:

Antifreeze Act

This bill would allow manufacturers and packagers, as well as distributors, to register antifreeze in the state. This change protects the contractual agreement between the manufacturers, packagers, and distributors and places the responsibility as to the quality and quantity of the product being offered for sale upon the registrant. The bill also requires the label to identify the brand of the product and the registrant's name and address. The fines for violations would be administered on a graduated scale, depending on the number of violations committed. These changes allow the department to go after the person actually responsible for defrauding the consumer.

Weights and Measures Program

The bill removes the requirement for the weights and measures program to be fully funded from the General Inspection Trust Fund. Since the regulation of the weights and measures program protects all consumers and not just the regulated entity, the department believes funding for the program should come from all available sources.

Agricultural Emergency Eradication Trust Fund

The bill clarifies the definition of an agricultural emergency to be when any, rather than all, of the agricultural interests (horticultural, aquacultural, etc.) of the state are threatened.

Division of Standards

The bill removes a reference to the Consumer Products Testing Laboratory which was dissolved in 1998.

Division of Fruit and Vegetables

The bill authorizes the division to certify and license inspectors of fruits and vegetables where no federal law requires such inspectors to be licensed and certified by the federal government. This will allow the department to continue the practice of providing "certified" inspections at processing plants, as required by state law.

Florida Agriculture Center and Horse Park Authority

This is a technical change to delete a duplicative reference to a quorum requirement for meetings of the Authority.

Pest Exclusion Advisory Committee

The bill creates a Pest Exclusion Advisory Committee responsible for reviewing and evaluating the state's present and future pest exclusion, detection, and eradication programs. The committee is to be comprised of 24 members representing the department, various agricultural, horticultural, aquacultural, and animal interests in the state, the United States Department of Agriculture's Animal and Plant Health Inspection Service, the Florida Department of Environmental Protection, the Florida Game and Fresh Water Fish Commission, the Florida Department of Health, the research and extension programs in the state's land grant institutions, the Speaker of the House of Representatives, the President of the Senate, and two citizens at large. A report to the Commissioner of Agriculture, Governor, Speaker of the House of Representatives, and the President of the Senate is required by January 1, 2001.

Withlacoochee and Goethe State Forests

This is a technical change deleting individual county names and inserting generic language to ensure that each county gets its fair share of gross receipts as the forests are expanded.

Legal Fences

The definition of a legal fence is expanded to include fences constructed of high tensile wire in accordance with the manufacturer's specifications.

Agricultural Commodity Insect Control

This is a technical change to reflect the new Farm Service Agency name brought about by the USDA reorganization. The Farm Service Agency was formerly known as the Agricultural Stabilization and Conservation Service.

Public Fairs and Expositions

The bill revises the tax exempt status of the Florida State Fair Authority to include exemption from special assessments. The bill restricts the proximity and dates of operation of temporary amusement rides to public fairs and expositions, except with the written consent of the affected fair association. Public fairs and expositions are now required to forward a copy of permit applications to fair associations within 50 miles when the application is sent to the department. The bill allows the department to make a determination regarding competition when two fair associations are scheduled within 50 miles of one another for the same name, dates or market. Preference in permitting shall be given to existing fair associations with established dates, locations, and names.

Amusement Rides

The bill removes the existing requirement for amusement ride owners to submit the manufacturer's current recommended operating instructions except upon request of the department. This will reduce the duplication of material the industry is required to provide to the department. The bill requires permanent facilities to use the department's prescribed form when filing an affidavit of the annual inspection. The bill prohibits bungy catapulting and reverse bungy jumping in the state. These two types of bungy jumping are deemed to be too risky to allow at this time. The bill removes the requirement that the department cover the costs and expenditures of the Bureau of Fair Rides Inspection through fees. Signs advising or warning patrons of age, size, and health restrictions, weight limitations or any other special consideration or use restriction would be required to be displayed at the patron entrance of each amusement ride. The department believes patrons should be advised of any special consideration or use restriction regarding an amusement ride, whether required or recommended by the manufacturer. And lastly, the bill would require the permit inspection to be done and the annual permit issued within 90 days of the execution of the Affidavit of Nondestructive Testing (NDT). This change will ensure the inspection and permitting occur within a reasonable time after the owner obtains the NDT and third party inspection.

Florida Right to Farm Act

The bill includes a technical change clarifying the definition of a farm product.

Abuse of Registered Breed Horses or Cattle

The bill provides relief from prosecution for prohibited acts relating to killing or aggravated abuse of registered breed horses or cattle resulting from weather conditions or other acts of God, providing the person is otherwise in compliance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It allows the department to establish rules to cover the costs and expenditures of the Bureau of Fair Rides Inspection. The department is also given the authority, by rule, to adopt forms for permanent facilities to file their affidavit of annual inspection.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Fair associations are required to forward a copy of permit applications to other fair associations within a 50 mile area at the time the application is sent to the department.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not Applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

Yes. Special assessments imposed upon fair associations or state fairs prior to the effective date of this act and unpaid at the effective date of this act are void.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment: **Not Applicable.**

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

Are families required to participate in a program?

Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Sections 501.913, 501.916, 501.919, 501.922, 531.54, 570.191, 570.235, 570.46, 570.48, 570.952, 588.011, 589.081, 593.1141, 616.05, 616.07, 616.08, 616.13, 616.15, 616.260, 616.242, 823.14, and 828.125, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: This section establishes the registrant of the antifreeze as the party responsible for the quality and quantity of the product sold, offered, or exposed for sale in this state. It also allows the manufacturer or packager, as well as the person whose name appears on the label, to register with the department.

Section 2: This section clarifies information to be included on antifreeze labels.

Section 3: This is a technical change to ensure the party actually committing the violation (of the Antifreeze Act) is warned rather than the registrant or the person whose name appears on the label.

Section 4: This section establishes a graduated scale of penalties for violations of the Antifreeze Act.

Section 5: This section removes the requirement that the weights and measures program be fully funded from the General Inspection Trust Fund.

Section 6: This is a technical change to clarify the definition of an agricultural emergency.

Section 7: This removes a reference to the Consumer Products Testing Laboratory which was dissolved in 1998.

Section 8: This section authorizes the Division of Fruit and Vegetables to certify and license inspectors.

Section 9: This is a technical change to remove a duplicative reference to a quorum.

Section 10: This section creates a Pest Exclusion Advisory Committee to look at plant and animal pest infestations and offer solutions and recommendations, in report form, to the Commissioner of Agriculture, Governor, Speaker of the House of Representatives, and President of the Senate by January 1, 2001.

Section 11: This section expands the definition of a legal fence to include fences constructed of high tensile wire in accordance with the manufacturer's specifications.

Section 12: This is a technical change deleting individual county names and inserting generic language to ensure that as the Withlacoochee and Goethe State Forests grow, each county gets its share of the gross receipts.

Section 13: This is a technical change to reflect the new Farm Service Agency name brought about the USDA reorganization. The Farm Service Agency was formerly known as the Agricultural Stabilization and Conservation Service.

Section 14: This section provides that amendments to the charter be noticed in the same manner as the original charter.

Section 15: This section revises the tax exemptions of fair associations to include exemptions from special assessments.

Section 16: This section clarifies the authority of a fair association to sell, mortgage, lease, or convey property.

Section 17: This section changes the proximity of temporary amusement rides to public fairs and expositions from 5 miles to a 20 mile radius, except with the written consent of the affected fair association. There is no longer a penalty for violation.

Section 18: Public fairs and expositions would be required to forward a copy of permit applications to fair associations within 50 miles when the application is sent to the department. The bill allows the department to make a determination regarding competition when two fair associations are scheduled within 50 miles of one another for the same name, dates or market. Preference in permitting shall be given to existing fair associations with established dates, locations, and names.

Section 19: This section no longer requires amusement ride owners to submit the manufacturer's current recommended operating instructions except upon request of the department. The bill requires permanent facilities to use the department's prescribed form when filing an affidavit of the annual inspection. The bill prohibits bungee catapulting and reverse bungee jumping in the state. The department is no longer required to cover the costs and expenditures of the Bureau of Fair Rides Inspection through fees. Signs advising or warning patrons of age, size, and health restrictions, weight limitations or any other special consideration or use restriction must be displayed at the patron entrance of each amusement ride. And lastly, the bill would require the permit inspection to be done and the annual permit issued within 90 days of the execution of the NDT.

Section 20: This section includes special assessments in the exemption for fair associations.

Section 21: This section clarifies the definition of a farm product.

Section 22: This section provides relief from prosecution for prohibited acts relating to killing or aggravated abuse of registered breed horses or cattle resulting from weather conditions or other acts of God, providing the person is otherwise in compliance.

Section 23: This section voids special assessments imposed upon a fair association or state fair before the effective date of this act if not paid by the effective date of this act.

Section 24: This section provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

There will be a small indeterminate amount of expenses associated with the reimbursement of travel and per diem for the Pest Exclusion Advisory Committee.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

There will be a small indeterminate amount of expenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill requires the amusement ride industry to place signs at each amusement ride to advise and warn patrons of any special considerations or use restrictions recommended by the manufacturer. Since many of the amusement rides do not have these signs posted at this time, the estimated cost to the industry would be approximately \$45,000 in the first year.

Approximately 1,800 amusement rides receive permits each year in the state. Based on observations, the department estimates only 50 percent of the permitted amusement rides will require such signs. It is reasonable to estimate the appropriate signs would not cost more than \$50 each.

Number of amusement rides requiring signs

(Half of presently permitted rides)	900
Cost of signs (per ride)	<u>\$ 50</u>
Total first year cost to industry	<u>\$45,000</u>

Signs would need periodic replacement but costs to the industry for replacement during any fiscal year should not exceed the cost of the initial year.

2. Direct Private Sector Benefits:

The proposed legislation, regarding antifreeze registration, will provide indirect benefits which will include increased latitude in the structure of contracts between distributors, manufacturers, and packagers.

Warning signs posted at patron entrances to amusement rides will allow patrons to make informed decisions on rides they should and should not be using. This should lessen the potential for injury.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The proposed legislation voids special assessments imposed upon a fair association or state fair before the effective date of this act if not paid by the effective date of this act. Currently, only two fairs have special assessments outstanding. South Florida Fair in Palm Beach County has approximately \$20,000 in special assessments and Florida State Fair in Tampa has approximately \$200,000 in special assessments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

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