HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1821 Citrus
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture		Reese	Reese
2) Natural Resources			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

The provisions of HB 1821 affect the 28 citrus juice processing facilities that operate in Florida. The bill amends s. 403.08725, Florida Statutes, by:

- redefining the terms “new sources” and “existing sources” and changing permitted emissions limits;
- requiring the Department of Environmental Protection (DEP) to develop, by a specified deadline, management practices to prevent or minimize certain pollutants;
- providing additional information to be included in rules adopted by the DEP;
- requiring that citrus processing facilities provide the DEP with specified information for evaluation and providing for the expiration of the program created under s. 403.08725, F.S.;
- requiring any change in the salary of an employee of the Department of Citrus (DOC) which is at or above $100,000 annually to be approved by the full membership of the Florida Citrus Commission; and
- requiring the DOC to publish an annual travel report stating specific information for each DOC staff member and each Florida Citrus Commission member who has traveled during that year.

The bill appears to have no significant impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

The bill requires the Florida Department of Environmental Protection (DEP) to develop, by a specified deadline, management practices to prevent or minimize certain pollutants. The bill also requires citrus processing facilities to submit certain specified information to DEP.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Clean Air Act Amendments of 1990 provided for a nationwide air-operation-permit program requiring owners of major sources of air pollution to obtain 5-year operation permits and to pay an annual per ton emission fee in an amount sufficient to pay the costs of the programs under Title V of the act.

To receive delegation to administer the program, states were required to submit their Title V air operation permit programs to the U.S. Environmental Protection Agency (EPA) by November 1993. The 1992 Florida Legislature enacted legislation designed to allow the Florida Department of Environmental Protection (DEP) to seek delegation. In 1993 and 1994, the Florida law was refined to address concerns expressed by EPA officials.

Section 403.0872, F.S., provides that each major source of air pollution, including electrical power plants, must obtain from the DEP an operation permit for a major source of air pollution which is the only DEP operation permit for a major source of air pollution required for such source. A major source of air pollution is a stationary source which emits any regulated air pollutant and which is:

1. A major source as defined in 42 U.S.C. s. 7412(a)(1);

2. A major stationary source or major emitting facility as defined in 42 U.S.C. s. 7602 (j) or 42 U.S.C. subchapter 1, part C or part D;

3. An affected source as defined in 42 U.S.C. s. 7651a(1);

4. An air pollution source subject to standards or regulations under 42 U.S.C. s. 7411 or s. 7412; provided that a source is not a major source solely because of its regulation under 42 U.S.C. s. 7412(r); or

5. A stationary air pollution source belonging to a category designated as a 40 C.F.R. part 70 source by regulation adopted by the administrator of the EPA and under 42 U.S.C. ss.7661, et seq. Certain facilities such as asphalt manufacturers and rock crushing facilities are exempt.

Each permitted major source of air pollution must pay an annual operation license fee in an amount determined by DEP to be sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program.

Essentially all 28 citrus processing plants in Florida have some type of air permit and most need Title V permits. Many plants need to obtain retroactive Prevention of Significant Deterioration permits and perform case-by-case Best Available Control Technology determinations for Volatile Organic Compound emissions. This involves extensive permitting work for both the industry and DEP. A comprehensive air sampling study was conducted in 1997 to determine the quantity of Volatile Organic Compound emissions from peel dryers. The Volatile Organic Compound emissions were over 100 tons per year from the smaller dryers and over 1,000 tons per year for the large plants.

In 2000, the Legislature enacted s. 403.08725, F.S., to regulate air pollutant emissions from the citrus juice processing industry in an innovative manner. The adopted legislation was collaboratively drafted by DEP, industry, the Legislature and the Governor's office. The statutory program eliminates federal permitting requirements in favor of a flexible approach that encourages pollution prevention and reduction. In January 2001, the DEP submitted the legislation to the EPA for approval as a revision of the State Implementation Plan for control of air pollutants. Approval by EPA is required for the statutory program to be effective in place of federal requirements. The EPA agreed to review the program under the provisions of an agreement between EPA and the Environmental Council of the States to pursue regulatory innovation. The DEP worked with the citrus juice processing industry to draft a supporting rule to address many of EPA's concerns with the statutory program.

To accommodate delays in approval, the Governor signed HB 1285 in May 2002, thereby extending EPA's time for approving the program from two years from submittal to EPA to three years from submittal. HB 27E was also signed, authorizing DEP to extend the times for complying with the statutory requirements for one year. In July, DEP submitted the statute, draft rule and supporting technical analysis of air pollutant emissions and impacts to EPA for review of the program under the ECOS Agreement. EPA responded with similar comments to those originally expressed. The major issues were related to emissions of sulfur and particulate matter, emission impact modeling, public participation and right to judicial review, periodic review of the program's effectiveness, a regulatory backstop related to fruit processing rates, and regulation of hazardous air pollutants.

In June 2002, DEP learned from EPA that the Natural Resources Defense Council (NRDC) was interested in commenting on the statutory program and would likely file suit against EPA if EPA approved the program without addressing NRDC's concerns, which were similar to several of EPA's concerns.

Discussions have continued between DEP, EPA, NRDC, and the citrus juice processing industry to reach an agreement on statutory and rule changes that will allow EPA to approve the program under the ECOS agreement. Most comments have been addressed with agreement on draft changes to the statute. The DEP sent complete draft statutory language to EPA in late February for review. Included were two options for limiting the sulfur content of fuel oils fired by the industry and a request for language that would address EPA's concerns about public participation and right to judicial review. EPA responded informally in mid-March regarding only the sulfur content issue, but DEP is still awaiting a formal response.

Proposed changes

The bill amends s. 403.08725, F.S., which provides that effective July 1, 2002, all citrus juice processing facilities must comply with this section of law in lieu of obtaining air-pollution construction and operation permits. Definitions of "new sources" and "existing sources" are revised.

Permitted Emissions Limits – After October 31, 2004, a facility with access to natural gas may not fire fuel oil containing greater than 0.1 percent sulfur by weight or, alternatively, operate without processes

that result in the equivalent of the use of such fuel. Those facilities without access to natural gas shall be limited to fuel oil containing no greater than 0.5 percent sulfur by weight, or, alternatively, be required to operate by using processes that result in the equivalent of the use of such fuel, except that all new sources at such facilities shall be limited to fuel oil containing no greater than 0.1 percent sulfur by weight or to the use of processes that result in the equivalent of the use of such fuel. No source shall fire any fuel other than fuel oil, natural gas, ethanol, propane, d-limonene, or biogas. No source shall fire used oil.

After October 31, 2004, for particulate matter of 10 microns or less, the emissions levels, expressed in pounds per million British Thermal Units of heat input, are established for specified types of new and existing sources. Fuel limitations are specified depending upon the source.

DEP is authorized to develop, with the cooperation of the Florida Citrus Processors Association (association), management practices for prevention or minimization of any other pollutant specifically regulated under the Clean Air Act, but not specifically addressed by this section. To the greatest practicable extent, considering the unique characteristics of each facility, after these management practices have been developed, each source subject to this section must either comply with such generic practices or obtain approval from DEP for use of modified practices that are uniquely tailored to the facility. Such management practices must be developed before the EPA issues final approval of the program developed under this section. DEP shall adopt such practices by rule when practicable.

Rules – DEP is directed to require registration of facilities and shall provide for such public and EPA participation as is required by Title V of the Clean Air Act.

Legislative Review – By March 2007, DEP, after consultation with the citrus industry, shall report to the Legislature concerning the implementation of s. 403.08725, F.S., and shall make recommendations for any changes necessary to improve implementation.

Additional Emissions Limits and Expiration of this Program –
No later than June 15 of each calendar year, each citrus processing facility subject to s. 403.08725, F.S., shall provide to the association, the total facility fruit throughput, in standard box measurement, for the previous June 1 through May 31 period. The association is required to provide DEP with the aggregate fruit throughput for all facilities no later than June 30 of each calendar year and to provide throughput information for individual facilities at DEP's request.

On July 31 following the close of a production year during which the industry wide fruit throughput exceeds 350 million boxes, specified terms and conditions shall expire and all facilities subject to those provisions shall become subject to all then-existing DEP air-permitting requirements for the construction and operation of major air-pollution sources and all generally applicable air-pollution-limiting DEP rules. Such facilities shall apply for individual Title V permits on or before July 30 of that year, and all facility emissions limits and unit emissions limits effective as of July 30 of that year shall continue to be the effective limits until changed through normal DEP air-pollution preconstruction permit processes.

If a facility makes timely application for a Title V permit and provides information to make the application complete, that facility is not considered to be operating without a permit during the processing of the Title V permit if the facility continues to provide DEP with all Title V compliance reports and monitoring reports.

DEP is directed to evaluate the program to determine if it is successful. Specific evaluation criteria are included. DEP, in consultation with the EPA, shall determine the success of the program by a comparison of industry wide aggregate air emissions increases and reductions resulting from regulation under this program versus emissions increases and reductions that would have resulted from regulation under the federal new source review program. During the evaluation period, DEP shall track new sources added to citrus facilities and estimate the emissions limitations that would have resulted from the federal new source review regulations in effect at the time of the addition of each source.

If this program is not considered successful, on July 31 following the date of completion of the evaluation, certain terms and conditions shall expire, and all facilities subject to such provisions shall become subject to all then-existing DEP air-permitting requirements for construction and operation of major air pollution sources and all generally applicable air pollution-limiting DEP rules. Such facilities must apply for individual Title V permits on or before July 31 of that year, and all facility emissions limits and unit emissions limits effective as of July 30 of that year shall continue to be the effective limits for such units and facilities, with certain exceptions.

If the program is not successful, DEP shall identify each air pollutant, PM10, NOx, SO2 and VOC, for which the industry wide emissions increases are greater than would have resulted under the federal new source review program and shall quantify the extent to which such emissions exceed such levels. For each pollutant so identified, the facilities subject to this section shall individually or collectively reduce industry wide emissions of such pollutants to levels equivalent to those that would have resulted under the federal new source review program.

In addition, the bill requires any change in the salary of an employee of the Florida Department of Citrus (DOC) which is at or above $100,000 annually to be approved by the full membership of the Florida Citrus Commission.

The bill also requires DOC to publish an annual travel report providing specific information for each staff member of DOC and each member of the Florida Citrus Commission who has traveled during that year.

C. SECTION DIRECTORY:

Section 1; Amends s. 403.08725, F.S., to redefine the terms “new sources” and “existing sources; amend permitted emissions limits; provide for DEP to develop certain management practices; provide specific contents of rules adopted by DEP; provide additional emissions limits; and provide for expiration of the program created under the section..

Section 2: Requires any change in the salary of an employee of the DOC which is at or above $100,000 annually to be approved by the full membership of the Florida Citrus Commission.

Section 3: Requires DOC to publish an annual travel report providing specific information for each staff member of DOC and each member of the Florida Citrus Commission who has traveled during that year.

Section 4: Provides that this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Natural gas has historically been the fuel used by most of Florida's citrus processing facilities; therefore, the impact on the industry as a whole is expected to be minimal.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A