HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 w/CS Department of Citrus
SPONSOR(S): Bowen
TIED BILLS: **IDEN./SIM. BILLS:** SB 96

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	13 Y, 0 N w/CS	Reese	Reese
2) Finance & Tax		Overton	Diez-Arguelles
3) Agriculture & Environment Approp. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Activities of the Florida Department of Citrus (department) are funded by revenues generated from the box tax, an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida, and the equalization tax. Adopted by the 1970 Legislature, the equalization tax is levied on citrus products, mainly frozen concentrated orange juice (FCOJ), imported into the state to be blended with Florida juice.

This bill codifies into law the “opt out” provision contained in the settlement agreement of Consolidated Case No. 2002-CA-4686 in the Circuit Court of the Tenth Judicial Circuit in Polk County. The provision allows persons liable for payment of the equalizing excise tax to elect to not pay two-thirds of that tax each year. The bill requires the department to develop a process for persons liable for the equalizing excise tax to elect to not pay a portion of the tax.

In addition, if there is an objection from anyone liable for the tax, the bill provides that the department may not spend any of the remaining one-third of the tax paid by that person on any advertising, marketing, or public relations activities.

Finally, the bill creates an executive committee within the Florida Citrus Commission and requires a report by the department’s internal auditor to be an agenda item at each regularly scheduled commission meeting.

Fiscal impact: The recurring revenue impact to the state will vary from year to year based on the domestic crop size. The department estimates a reduction of $2.6 million in 2004-2005 revenue to the Citrus Advertising Trust Fund. The estimate is based on an average of the number of gallons of juice imported over the past five years. Based on the range of those five years, the recurring revenue impact may be from $1.6 to $3.6 million.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
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:

B. EFFECT OF PROPOSED CHANGES:

Background information and present situation:

The Florida Citrus Commission (commission) was established in 1935[1] by an act of the Florida Legislature at the request of the citrus industry. During state governmental reorganization in the 1960s[2], the Florida Department of Citrus (department) was created and charged with regulation, research, advertising and marketing for the citrus industry, and to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets.

Activities of the department are funded by revenues generated from the box tax[3], an excise tax levied on each standard field box grown and placed into the primary channel of trade in Florida, and the equalization tax[4]. Adopted by the 1970 Legislature[5], the equalization tax is levied on citrus products, mainly frozen concentrated orange juice (FCOJ) imported into the state to be blended with Florida juice. Brazil is the source of the largest amount of juice imported, but other Central American countries, such as Costa Rica, also export frozen concentrate to the state. Until 2002, non-Florida domestic juices, primarily from California, Texas, and Arizona, were exempt from the equalization tax.[6]

According to the department, the equalization tax is an excise tax imposed not upon property, but rather upon the activities of processing, reprocessing, blending, mixing, packaging, or repackaging process orange or grapefruit products of foreign citrus juices or upon the removal of any portion of such products from the original container in which it arrives in Florida. Proceeds from the tax help finance the department's advertising programs for the sale and consumption of Florida citrus fruit and juices. The fee is called the "equalization tax" because it equals the tax on Florida oranges processed for juice.

Both the box tax and the equalization tax are calculated annually based upon the budget of the department, the amount of Florida fruit projected to be harvested, and the amount of FCOJ expected to be imported.

Lawsuit and settlement agreement:

In October 1999, five companies sued the State of Florida and the Florida Department of Citrus challenging the legality of the equalization tax. Plaintiffs' legal counsel argued that the tax amounts to a tariff on foreign goods, which, under the United States Constitution, only Congress has authority to

[1] s. 3, ch. 16854, 1935.
[2] s. 20.29, F.S.
[3] s. 601.15, F.S.
[4] s. 601.155, F.S.
[5] s. 1, ch. 70-142, L.O.F.
[6] s. 2, ch. 2002-26, L.O.F.

levy. The suit alleged that the law, or application of the law, resulted in violations of the Commerce Clause, Equal Protection Clause, Import/Export Clause and the First Amendment of the United States Constitution.

In March 2002, Judge Dennis Maloney of the 10th District Circuit Court in Bartow ruled that s. 601.155, F.S., is unconstitutional because it violates the Commerce Clause. No remedy was given. Subsequent to the ruling, s. 601.155, F.S., was amended to remove the exemption for domestically grown citrus products imported into Florida[7].

In July 2003, Judge Maloney issued an order which effectively dismissed all claims with the exception of the claim pertaining to the Commerce Clause. The order provides that plaintiffs may “opt out” of paying up to two-thirds of the equalization tax. The “opt out” provision is also part of the settlement agreement between the plaintiffs and the department.

Proposed changes:

This bill codifies into s. 601.155, F.S., the “opt out” provision contained in the settlement agreement of Consolidated Case No. 2002-CA-4686 in the Circuit Court of the Tenth Judicial Circuit in Polk County. Persons liable for payment of the equalizing excise tax under the Florida Citrus Code[8] to elect to not pay two-thirds of that tax each year. The bill requires the department to develop a process for persons liable for the equalizing excise tax to elect to not pay a portion of the tax. In addition, the bill provides that the department may not spend any of the remaining one-third of the tax on any advertising, marketing, or public relations activities if there is an objection from anyone liable for the tax.

The bill also creates, within the Florida Citrus Commission (commission), an executive committee consisting of the commission chair and two additional members of the commission. Committee members are elected for one year terms. With this provision, any matter to be considered by the commission or the executive director must be submitted in advance to the executive committee for approval, rejection or modification. All committee meetings are open to the public.

Finally, the bill requires that at each regularly scheduled meeting of the commission, a report by the department’s internal auditor be a part of the agenda.

C. SECTION DIRECTORY:

Section 1. Amends s. 601.04, F.S., to direct the Florida Citrus Commission to establish an executive committee, consisting of the chair of the commission and two additional commission members elected by a majority vote of the members of the commission. Provides for terms of office. Requires that matters to be considered by the Commission or executive director of the Department of Citrus be submitted in advance to the executive committee for approval, rejection or modification. Directs the executive committee to meet no later than 10 days before each meeting of the Florida Citrus Commission in order to consider, at a minimum, any item on the agenda for the upcoming Commission meeting. Requires all meetings of the executive committee to be open to the public and governed by chapter 286, F.S.

Section 2. Amends s. 601.155, F.S., to require the Florida Department of Citrus to develop a process for persons liable for the equalizing excise tax to elect not to pay two-thirds of the tax. Prohibits the department to expend any of the remaining one-third of excise tax moneys for advertising, marketing, or public-relations activities. Allows such funds to be used for research, administrative and regulatory activities. Provides for dismissal of certain claims.

---

[7] s. 2, ch. 2002.26, L.O.F.
[8] ch. 601, F.S.

Section 3. Requires the Florida Citrus Commission to include a report by the internal auditor of the Department of Citrus as an agenda item at each regularly scheduled meeting.

Section 4. Provides that this act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 04-05	FY 05-06	FY 06-07
1. Revenues:			
Recurring – Citrus Advertising Trust Fund (CATF)	($2,600,000)	**see fiscal comments	
2. Expenditures:			
Recurring***	$500,000	$500,000	$500,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The estimated revenue reduction to the CATF is based on an average of the number of gallons of juice imported over the past five years. The amount of imported juice is usually inverse to the Florida crop size. The reduction is based on an assumption by the department that anyone currently paying the equalization tax will "opt out" each year.

**The recurring revenue impact will vary from year to year based on the domestic crop size. The estimate for 2004-2005 is based on an average of the last five years. Based on the range of those five years, the impact may be from $1.6 to $3.6 million.

***Under the settlement agreement, the department agreed to pay plaintiffs $500,000 per year for the next four years, pursuant to legislative approval. The department has requested a recurring expenditure of $500,000 in its FY 2004-2005 Legislative Budget Request. This amount will remain a recurring expense through the FY 2007-2008 budget year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 10, 2004, meeting, the House Committee on Agriculture adopted three amendments to the original bill.

Amendment 1 creates, within the Florida Citrus Commission (commission), an executive committee consisting of the commission chair and two additional members of the commission.

Amendment 2 requires that at each regularly scheduled meeting of the commission, a report by the department's internal auditor be a part of the agenda.

Amendment 3 provides that the department may not spend any of the remaining one-third of the tax on any advertising, marketing, or public relations activities if there is an objection from anyone liable for the tax.