

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 96

SPONSOR: Committee on Agriculture and Senator Alexander

SUBJECT: Department of Citrus/Equalizing Excise Tax

DATE: March 11, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida Department of Citrus (department) has regulatory responsibility for all aspects of the citrus industry. To fund the department’s operations, the Legislature established 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. In 1970, the Legislature adopted an equalization tax, which is assessed on citrus products, mainly frozen concentrated orange juice, imported into the state to be blended with Florida juice.

This bill allows persons liable for payment of the equalizing excise tax under the Florida Citrus Code to elect not to pay two-thirds of that tax each year. It 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. It also directs the department to develop a process for persons liable for the equalizing excise tax to annually object to payment of the tax.

The bill also directs the Florida Citrus Commission to establish an executive committee from among its members. It 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. The executive committee is directed 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. The bill requires all meetings of the executive committee to be open to the public and governed by chapter 286, F.S. It also requires the Florida Citrus Commission to include as an agenda item at each regularly scheduled meeting a report by the internal auditor of the Department of Citrus.

This bill amends sections 601.04 and 601.155 of the Florida Statutes.

II. Present Situation:

Today, there are more than 12,000 citrus growers cultivating a record 107 million citrus trees on more than 858,000 acres of land in Florida. However, for years, the citrus industry was disorganized and suffered many losses due to freezes, droughts and infestations. In the early 1930s, a new product called orange concentrate began being marketed to drug stores and bakeries. Many in the industry didn't anticipate much success from the new product.

According to the Florida Department of Citrus, the department, which is governed by a 12-member board called the Florida Citrus Commission, was established by the 1935 Legislature at the request of the citrus industry. The act, called the Florida Citrus Code, states that the Commission/Department is to protect and enhance the quality and reputation of Florida citrus in both domestic and foreign markets. The department is charged with the regulation and supervision of the quality and purity of Florida citrus products. By protecting and stabilizing Florida's citrus industry, the department helps to promote the general welfare and social and political economy of the state.

The Commission oversees and guides the activities of the department and must approve all department budgets and actions. It is responsible for setting the annual amount of the excise tax, as well as quality standards for all citrus grown, packed or processed in Florida. However, it is the Florida Department of Agriculture and Consumer Services and the U.S. Department of Agriculture who enforce those standards. In addition, the Commission adopts rules regulating packaging and labeling of Florida citrus products and licensing requirements for packers, shippers and processors.

Activities of the department are funded by revenues generated from the box tax, an excise tax levied on each standard field box grown and placed into the primary channel of trade in Florida. In addition, the equalization tax, which was adopted by the 1970 Legislature, is levied on citrus products, mainly frozen concentrated orange juice 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.

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 processed orange or grapefruit product 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 frozen concentrated orange juice expected to be imported.

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 the authority to 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.

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.

III. Effect of Proposed Changes:

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.

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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

	FY 2004-05	FY 2005-06	FY 2006-07
Revenues:			
Recurring – Citrus Advertising Trust Fund (CATF)	(2,600,000)	*see fiscal comments	
Expenditures:			
Recurring **	\$500,000	\$500,000	\$500,000

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 maybe 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 2004-2005 Legislative Budget Request. This amount will remain a recurring expense through the 2007-2008 budget year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
