

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1717 PCB AG 05-01 Agriculture

SPONSOR(S): Agriculture Committee

TIED BILLS: IDEN./SIM. BILLS: CS / CS / SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	11 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee		Davis	Dixon
2) State Resources Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1717 addresses a variety of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS). The major components of the bill include:

- Clarification of jurisdictional authority relating to bison raised as agriculture;
- Establishing a statutorily-recognized Environmental Stewardship Certification Program;
- Requiring special permits for persons wishing to engage in biomass plantings;
- Characterizes certain agricultural equipment as being obsolete and provides that such equipment be assessed at salvage value for ad valorem tax purposes;
- Amending procedures relating to obtaining burn permits from the Division of Forestry;
- Clarification of civil liability in regards to prescribed burns; and
- Amending the definition of "material safety data sheet" to allow dissemination of information through electronic means.

In addition, the bill cleans up some oversights identified in legislation passed during the 2004 legislative session regarding the Farm Labor Safety Act. And lastly, the bill contains several technical changes that either remove or change outdated references that are found in the current statutes.

The Department of Agriculture reports the bill will have a negative \$1.6 million impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty:

- By clarifying the jurisdictional authority of bison, bison owners will be regulated by only one agency, either the Fish and Wildlife Commission or the Department of Agriculture and Consumer Services, rather than both.
- By amending the term, material safety data sheet, manufacturers and suppliers have an option of supplying consumers with either a pre-printed sheet or a website address where the information may be obtained.

Promote personal responsibility:

- The Environmental Stewardship Certification Program provides a voluntary means of education and recognition for agricultural producers.
- The special permitting process for persons involved in biomass plantings requires the permit holder to put up a security bond or certificate of deposit to ensure that the plantings will not be abandoned if the economic venture proves not to be profitable.

Provide limited government:

- The Department of Agriculture and Consumer Services reports that this bill will require 30 additional positions and \$1.6 million for implementation.

B. EFFECT OF PROPOSED CHANGES:

Bison

Current statute is unclear regarding which state agency has jurisdictional authority for bison. Fish and Wildlife Conservation Commission (FWC) rules define bison as a "game mammal," with ss. 372.921-922, F.S., providing statutory jurisdiction. While s. 570.36, F.S., states the Department of Agriculture and Consumer Services (DACS) has jurisdiction over livestock, with livestock being defined in s. 585.01, F.S., as "grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas, which are raised for private use or commercial purposes." Consequently, some bison owners are subject to conflicting rules and regulations regarding the care and maintenance of their herd.

This issue is clarified by charging the FWC with jurisdictional authority over bison located on hunting preserves or game farms or at places of exhibition which charge a fee. DACS has jurisdictional authority for bison domesticated and confined for commercial farming purposes.

Farm Labor Safety Act

During the 2004 session, the Legislature passed the Farm Labor Safety Act. Since that time some oversights have been identified. This legislation names Part II of Chapter 450, F.S., as the "Alfredo Bahena Act." Mr. Bahena was a long-time organizer with the Farmworker Association of Florida, who was killed in a car accident in May 2004.

Secondly, the advisory committee to the Legislative Commission on Migrant Labor is abolished. This provision was inadvertently left out of last year's legislation. And lastly, the definition for "material safety data sheet" (MSDS) is amended to include electronic as well as written or printed material. Many manufacturers and distributors provide a website address where the MSDS may be downloaded and printed.

Environmental Stewardship Certification

Agricultural producers have been the subject of debate and, in some cases, criticism about farm practices that are perceived by the public as insufficient to protect natural resources. While many public and private programs have been developed to assist farmers with these issues, no statutory program currently exists.

The bill provides for a voluntary certification program that must:

- Be integrated, to the extent possible, with other public and private programs;
- Be designed to recognize and promote practices, whether agriculture or homeowner, that demonstrate exemplary resource management that is related to environmental stewardship;
- Include a means to periodically review certifications to ensure compliance with the program requirements; and,
- Require periodic continuing education to maintain certification.

The bill provides criteria for DACS to use in providing agricultural certification. The bill further provides for the Soil and Water Conservation Council to provide criteria to DACS for obtaining agricultural certification. The bill provides for DACS and the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida to work together, as needed, to develop a curriculum. DACS is given authority to use third-party providers to administer or implement any, or all, of the program. DACS is also given rule-making authority to establish the certification program, providing that any rules adopted are developed in consultation with state universities, agricultural organizations, and other interested parties.

Cultivation of non-native plants

There is a growing interest in cultivating large plantings of vigorously growing plants to be used as biomass for alternative energy sources for electric power generation. Concerns have surfaced that if this enterprise is not profitable, large plantings of potentially invasive plants would be abandoned and the state could potentially be left with the responsibility of disposing of the material.

The bill provides for persons wishing to engage in biomass plantings to obtain a special permit from DACS. In addition to obtaining the permit, the permit holder must pay a fee and provide proof of financial responsibility (i.e. a surety bond or certificate of deposit) to cover any clean-up costs associated with abandoned plantings. Additionally, the bill provides for:

- Information to be included on the application form;
- The permit holder to remove and destroy plants, under certain circumstances;
- DACS to issue an immediate final order under certain circumstances;
- Reimbursement by the permit holder to DACS for removing and destroying plants;
- Administrative hearing process for the permit holder if objections arise;
- Requirements regarding surety bonds or certificates of deposit; and,
- DACS to review the business records of the permit holder during normal business hours.

Civil liability relating to forest protection

Current sections of chapter 590, F.S., are in conflict with one another. Section 590.125(3)(c), F.S., provides protection from liability regarding controlled burns unless gross negligence is proven. However, s. 590.13, F.S., attaches a civil liability for any violation of chapter 590, F.S., whether or not there is criminal prosecution and conviction.

The bill addresses this conflict by providing an exemption from civil liability for burns conducted in accordance with s. 590.125(3)(c), F.S.

Burn permits

Current law allows persons to burn wild lands or vegetative land-clearing debris if certain criteria are met, one being obtaining a burn permit from the Division of Forestry. The division may deny the permit if air quality and fire danger are unfavorable for safe burning.

The bill provides for the Division of Forestry to obtain at least two phone numbers for persons who have been denied a burn permit. In addition, the division must make at least two attempts to notify the person seeking the permit once burn conditions allow the issuance of a permit.

Obsolete agricultural equipment

For ad valorem tax purposes, taxpayers owning agricultural equipment must file an annual return to report equipment owned as of January 1st of each year. The county property appraiser is required to assess the value of property at a just valuation which has been held to mean 100% of fair market value. The Florida Department of Revenue adheres to life expectancy guidelines that establish a 10 year life for agriculture, machinery and equipment, which results in agricultural equipment being assessed at salvage value after it is ten years old. Agricultural equipment that is less than ten years old but is not commonly used by the taxpayer for a variety of reasons is supposed to be assessed at fair market value rather than salvage value.

The bill provides for agricultural equipment no longer used in agricultural production to be considered obsolete and therefore assessed at salvage value for ad valorem tax purposes. In addition, the taxpayer claiming the right of this assessment must state so in a return filed as provided by law. The property appraiser may require the taxpayer to produce additional information as necessary in order to establish the taxpayer's right to have said property classified as obsolete.

Statutory clean-up

Several sections in the bill are being amended either to clean up or remove outdated language or to update references to federal law.

C. SECTION DIRECTORY:

Section 1: Amends s. 372.921, F.S.; includes bison in the exemption regarding exhibition or sale of wildlife.

Section 2: Amends s. 372.922, F.S.; includes bison in the exemption regarding personal possession of wildlife.

Section 3: Creates s. 450.175, F.S.; names Part II of chapter 450, F.S.

Section 4: Repeals s. 450.211, F.S.; repeals creation of advisory committee.

Section 5: Amends s. 487.2031, F.S.; amends definition of the term "material safety data sheet."

Section 6: Amends s. 502.014, F.S.; deletes a duty of the department relating to issuance of a temporary marketing permit for milk and milk products.

Section 7: Amends s. 502.091, F.S.; deletes a reference to a milk type no longer produced.

Section 8: Amends s. 503.011, F.S.; updates a reference regarding frozen desserts.

Section 9: Amends s. 531.39, F.S.; deletes an outdated reference regarding state standards.

Section 10: Amends s. 531.47, F.S.; revises provisions regarding information required on packaging.

Section 11: Amends s. 531.49, F.S.; revises provisions regarding advertising packaged commodities.

Section 12: Creates s. 570.076, F.S.; creates an environmental stewardship program within the department.

Section 13: Amends s. 570.9135, F.S.; corrects a reference.

Section 14: Amends s. 581.083, F.S.; provides for special permit and security for the cultivation of nonnative plants.

Section 15: Amends s. 585.002, F.S.; provides regulatory authority to the department regarding bison.

Section 16: Amends s. 590.125, F.S.; revises provisions regarding the issuance of burn permits; revises provisions regarding civil liability for burning of certain land.

Section 17: Provides for obsolete agricultural equipment to be assessed at its salvage value for purposes of ad valorem tax; defines the term "agricultural equipment"; provides a procedure for a taxpayer to claim the right of assessment; and, authorizes the property appraiser to require information establishing a taxpayer's right to the classification.

Section 18: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Dairy Industry (Section 6): There is no impact on revenue from the elimination of the Temporary Marketing permit (\$100). Since Florida is a member of the National Conference on Interstate Milk Shipments, DACS accepts a similar permit issued by the federal government and it is free of charge to producers of milk and milk products that do not conform to existing standards and definitions. Therefore, this permit has never been utilized by the dairy industry.

Plant Industry (Section 14): The potential revenue from biomass plantings would be insignificant. The division anticipates that no more than two or three special permits would be issued for biomass plantings. The permits would each cost approximately \$50.

2. Expenditures:

	FY 2005-06	FY 2006-07
Recurring		
30 FTE Salaries/Benefits	1,033,140	1,033,140
Expenses	268,330	268,330
Computer Support	283,500	283,500
Non-recurring	<u>63,000</u>	-
	\$ 1,647,970	\$ 1,584,970

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Plant Industry (Section 14): The costs associated with the special permit would be approximately \$50.00 per permit plus \$100.00 for two onsite inspections to ensure compliance of conditions specified in the permit. There would also be the costs for obtaining a surety bond or a certificate of deposit, which will vary depending on the size of the planting.

D. FISCAL COMMENTS:

The Revenue Estimating Conference projects that the reduced assessment for obsolete agricultural equipment would result in a loss of General Revenue on an annualized basis of \$.9 million for FY 2005-06 and \$.9 million on a cash basis for FY 2006-07.

The Department of Agriculture and Consumer Services reports that provisions of this bill would require 30 additional positions and \$1,647,970.

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:

Section 4, Article VII of the Florida Constitution states that "By general law regulations shall be shall be prescribed which shall secure a just valuation of all property for ad valorem taxation,..." The Florida Supreme Court has consistently held that all property is subject to ad valorem taxation unless it is constitutionally exempted, and that "just valuation" of property for ad valorem tax purposes is synonymous with 100% of "fair market value." This bill, as written, may have constitutionality implications.

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority in association with establishing the Environmental Stewardship Certification Program. The bill further states that rules adopted in regards to the program must be developed in consultation with state universities, agricultural organizations and other interested parties.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Committee on Agriculture adopted three amendments to PCB AG 05-01.

- **Amendment 1** removed forestry operations from the Environmental Stewardship Certification Program. Forestry is already included in the definition of agriculture; therefore its' designation was redundant.
- **Amendment 2** required the Division of Forestry, if denying a burn permit, to attempt to get at least two phone numbers for the person requesting the permit and, upon return of conditions allowing for the issuance of the permit, to make at least two attempts to notify the person that a permit may be granted.
- **Amendment 3** characterizes certain agricultural equipment as being obsolete and provides that such equipment be assessed at salvage value for ad valorem tax purposes.