

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1717 CS 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	8 Y, 0 N, w/CS	Davis	Dixon
2) State Resources Council		Kaiser	Hamby
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:

- Provides that property leased or subleased by DACS and used for citrus inspections shall have salvage value for ad valorem tax purposes;
- Clarifies jurisdictional authority relating to bison raised as agriculture;
- Establishes a statutorily-recognized Environmental Stewardship Certification Program;
- Requires 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;
- Amends procedures relating to obtaining burn permits from the Division of Forestry;
- Clarifies civil liability in regards to prescribed burns;
- Amends the definition of "material safety data sheet" to allow dissemination of information through electronic means; and
- Exempts DACS from MyFloridaMarketPlace.

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 And lastly, the bill contains several technical changes that either remove or change outdated references that are found in the current statutes.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:

Ad Valorem Assessments on Leased Property

Citrus juice extractors are equipment used by Department of Agriculture and Consumer Services (DACS) inspectors to verify that fruit meets statutory standards before being packed or processed. Extractors are also used by some growers or citrus plants in their quality control programs. DACS requires some facilities to sublease these regulatory machines so that they (the department) would control the calibration and maintenance of the equipment. Prior to January 1, 2004, no county had assessed ad valorem taxes on any of the extractors used by DACS in its regulatory operations. Taxes have now been assessed, beginning January 1, 2004, in two counties: Indian River and Polk. Machines used for quality control programs are either purchased or leased directly from the manufacturers by the private entities, and are already subject to the tax.

This bill characterizes property leased or subleased by DACS and used for citrus inspections at salvage value for ad valorem tax purposes. It also makes this provision retroactive to December 31, 2003.

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 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.

MyFloridaMarketPlace Exemption

Current efforts are underway to standardize the financial systems across state government. One initiative establishes a statewide e-procurement [MyFloridaMarketPlace (MFMP)] system, where all agencies¹ shall participate in the on-line program to enable the state to promote open competition and leverage its buying power.²

HB 1717 exempts DACS from the MFMP e-procurement system.

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;

¹ Section 287.012(1), F.S.

² Section 287.057(23)(a), F.S.

- 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.

Severability

A severability clause is included in the bill to ensure that if any provision of this bill is deemed invalid, the remainder of the bill will still be enacted.

C. SECTION DIRECTORY:

Section 1: Amends s. 193.451, F.S.; clarifying the value for purposes of assessment for ad valorem taxes of certain property; provides intent for retroactive application.

Section 2: Amends s. 372.921, F.S.; includes bison in the exemption regarding exhibition or sale of wildlife.

Section 3: Amends s. 372.922, F.S.; includes bison in the exemption regarding personal possession of wildlife.

Section 4: Creates s. 450.175, F.S.; names Part II of chapter 450, F.S.

Section 5: Repeals s. 450.211, F.S.; repeals creation of advisory committee.

Section 6: Amends s. 487.2031, F.S.; amends definition of the term “material safety data sheet.”

Section 7: 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 8: Amends s. 502.091, F.S.; deletes a reference to a milk type no longer produced.

Section 9: Amends s. 503.011, F.S.; updates a reference regarding frozen desserts.

Section 10: Amends s. 531.39, F.S.; deletes an outdated reference regarding state standards.

Section 11: Amends s. 531.47, F.S.; revises provisions regarding information required on packaging.

Section 12: Amends s. 531.49, F.S.; revises provisions regarding advertising packaged commodities.

Section 13: Amends s. 570.07, F.S.; exempts the department from any on-line procurement program.

Section 14: Creates s. 570.076, F.S.; creates an environmental stewardship program within the department.

Section 15: Amends s. 570.9135, F.S.; corrects a reference.

Section 16: Amends s. 581.083, F.S.; provides for special permit and security for the cultivation of nonnative plants.

Section 17: Amends s. 585.002, F.S.; provides regulatory authority to the department regarding bison.

Section 18: 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 19: 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 20: Provides severability clause.

Section 21: 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:

See fiscal comments and constitutional issues below.

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 revenue to local governments on an annualized basis of \$.9 million for FY 2005-06 and \$.9 million on a cash basis for FY 2006-07.

The bill's provision stating property leased or subleased by DACS and used for citrus inspections shall have salvage value for ad valorem tax purposes could result in further loss of revenue to local governments. This provision has not been reviewed by the Revenue Estimating Conference to determine an actual impact.

The Department of Management Services entered into a multi-year contract with Accenture, LLP, to provide an e-procurement system called MyFloridaMarketPlace (MFMP). Accenture is to be compensated from the one percent transaction fee paid by vendors doing business with the state. The

contract includes annual and total contract compensation targets which the state pays penalties for not meeting. To date, the collections have not met the targets because of vendors not reporting all of their transactions and because of delays in rolling the system out to all agencies. The DACS exemption from the use of MFMP will make it that much harder for the state to meet the terms of the contractual agreement between the state and Accenture, LLP.

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:

Although the bill reduces the authority of cities and counties to raise revenues in the aggregate, the impact is less than \$1.8 million and is insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution. The estimated reduction in ad valorem tax revenues to local governments by this bill is approximately \$.9 million.

2. Other:

Section 4, Article VII of the Florida Constitution states that "By general law regulations 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.

On April 11, 2005, the Agriculture and Environment Appropriations Committee adopted three amendments before reporting the bill favorably.

- **Amendment 1** provided that property leased or subleased by DACS and used for citrus inspections shall have salvage value for ad valorem tax purposes.
- **Amendment 2** exempted DACS from MyFloridaMarketPlace by allowing them to use any program for on-line procurement or contracting services.
- **Amendment 3** added a severability clause to the bill.