

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	8 Y, 0 N, w/CS	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;
- Requires DACS to investigate complaints relating to the Florida Agricultural Worker Safety Act;
- Amends the membership of the Florida Agriculture Center and Horse Park Authority;
- Standardizes procedures statewide regarding the inspection of consumer products;
- 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 And lastly, the bill contains several technical changes that either remove or change outdated references that are found in the current statutes.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.

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 such establishments where such species are kept primarily for display to the public. 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.

Lastly, the bill provides for DACS to investigate any complaint filed, which meets specified criteria, regarding violations of the Florida Agricultural Worker Safety Act (FAWSA). In the recent past, several complaints have been filed with DACS regarding the FAWSA. Once the investigations were complete, a majority of the cases were found to be bogus robbing DACS of the time and manpower to investigate legitimate complaints.

The bill provides that each complaint be in writing, signed by the complainant and legally sufficient. The bill provides an explanation of legally sufficient. To determine legal sufficiency, DACS may require supporting information or documentation. The bill provides criteria for investigating an anonymous complaint or a complaint made by a confidential informant.

Additionally, the privilege against civil liability is granted to any complainant or any witness, provided that the complainant or witness has not acted in bad faith or with malice in providing such information. The bill further provides for persons submitting false complaints in writing to be guilty of a misdemeanor of the second degree, punishable by imprisonment not to exceed 60 days or a fine of \$500.¹

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.

DACS Powers and Duties

Current efforts are underway to standardize the financial systems across state government. One initiative establishes a statewide e-procurement [MyFloridaMarketPlace (MFMP)] system, where all

¹ ss. 775.082, 775.083, or 837.06, F.S.

agencies² shall participate in the on-line program to enable the state to promote open competition and leverage its buying power.³ HB 1717 exempts DACS from the MFMP e-procurement system.

DACS is charged with enforcing the state laws and rules regarding many of the products consumers purchase every day. DACS' inspectors verify the quality and quantity of many products offered for sale in the various retail establishments across the state. And, when items are found to be in noncompliance, these inspectors have the authority to issue a warning and/or fine.

Some local governments also have consumer protection offices, which mirror the duties of DACS. However, in some municipalities, the fines charged are nearly double the fines levied by DACS. This legislation requires local governments providing the same inspection services as DACS to use the standards and fines set forth by DACS.

Florida Agriculture Center and Horse Park Authority

During the 1994 legislative session, in an effort to strengthen equine and other agriculture-related industries, the Legislature created the Florida Agriculture Center and Horse Park. The legislation further created the Florida Agriculture Center and Horse Park Authority (authority), which is comprised of 21 members appointed by the Commissioner of Agriculture and Consumer Services, to oversee the planning, construction and operation, among other things, of the Florida Agriculture Center and Horse Park.

Originally, the law required the membership of the authority to include representatives of various industries throughout the state. This legislation deletes the reference to the various industry representatives and allows the Commissioner of Agriculture to appoint 21 members of his choosing. Additionally, the bill provides for the terms of members who are appointed prior to the effective date of this legislation to expire upon the effective date of this legislation.

The bill also deletes a reference to a report to be supplied by the Commissioner of Agriculture to the Legislature each year relating to the activities of the authority.

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.

² Section 287.012(1), F.S.

³ Section 287.057(23)(a), F.S.

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.

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.

Additionally, the bill provides a definition for power farm equipment that includes moving or stationary equipment that contains within itself the means for its own power. The definition is for the purpose of assessing sales tax on agricultural equipment.

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.; clarifies the value for purposes of assessment for ad valorem taxes of certain property; provides intent for retroactive application.

Section 2: Amends s. 212.02, F.S.; provides a definition for power farm equipment.

Section 3: Amends s. 212.08, F.S.; corrects a reference.

Section 4: Amends s. 372.921, F.S.; includes bison in the exemption regarding exhibition or sale of wildlife.

Section 5: Amends s. 372.922, F.S.; includes bison in the exemption regarding personal possession of wildlife.

Section 6: Creates s. 450.175, F.S.; names Part II of chapter 450, F.S.

Section 7: Repeals s. 450.211, F.S.; repeals creation of advisory committee.

Section 8: Amends s. 487.2031, F.S.; amends definition of the term "material safety data sheet."

- Section 9:** Creates s. 487.2042, F.S.; provides for investigations of complaints; provides criteria for commencement of an investigation; provides for exemption from civil liability under certain circumstances; and, provides penalties for making a false complaint.
- Section 10:** 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 11:** Amends s. 502.091, F.S.; deletes a reference to a milk type no longer produced.
- Section 12:** Amends s. 503.011, F.S.; updates a reference regarding frozen desserts.
- Section 13:** Amends s. 531.39, F.S.; deletes an outdated reference regarding state standards.
- Section 14:** Amends s. 531.47, F.S.; revises provisions regarding information required on packaging.
- Section 15:** Amends s. 531.49, F.S.; revises provisions regarding advertising packaged commodities.
- Section 16:** Amends s. 570.07, F.S.; preempts certain powers to the state and the department; and exempts the department from any on-line procurement program.
- Section 17:** Creates s. 570.076, F.S.; creates an environmental stewardship program within the department.
- Section 18:** Amends s. 570.9135, F.S.; corrects a reference.
- Section 19:** Amends s. 570.952, F.S.; amends the membership of the Florida Agriculture Center and Horse Park Authority (FACHPA); revises terms of membership; abolishes a report submitted by the department to the Legislature regarding the activities of the FACHPA.
- Section 20:** Amends s. 581.011, F.S.; provides a definition for “invasive plant”.
- Section 21:** Amends s. 581.083, F.S.; provides for special permit and security for the cultivation of nonnative plants.
- Section 22:** Amends s. 585.002, F.S.; provides regulatory authority to the department regarding bison.
- Section 23:** Amends s. 590.125, F.S.; revises provisions regarding civil liability for burning of certain land.
- Section 24:** 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 25:** Provides severability clause.
- Section 26:** 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 9): 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 20): 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:

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 20): 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.

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.

On April 20, 2005, the State Resources Council adopted a strike-all amendment to HB 1717 w/ CS. The differences in the strike-all amendment and HB 1717 w/ CS are listed below:

- The "bison" language is amended to better clarify the jurisdictional authority between the Florida Wildlife Commission and the Department of Agriculture and Consumer Services (DACS).
- The definition of obsolete farm equipment is amended.
- A definition is added for "invasive plant".
- The membership of the Florida Agriculture Center and Horse Park Authority is amended, as well as the term for current members.
- The issue relating to burn permits is removed from the bill.
- DACS is given the authority to investigate complaints relating to the Florida Agricultural Farm Worker Safety Act.
- A definition is added for "power farm equipment".