

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 PCB AG 06-01 Department of Agriculture and Consumer Services

SPONSOR(S): Agriculture Committee

TIED BILLS: _____ **IDEN./SIM. BILLS:** _____

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	6 Y, 0 N	Kaiser	Reese
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SUMMARY ANALYSIS

HB 7075 addresses a variety of issues relating to the Department of Agriculture and Consumer Services. In regards to pest control, the bill amends the definition of “employee” to clarify this person is not independent of, but under the direct control of a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee. Additionally, the bill amends the definition of “independent contractor” to be a person or company that meets at least one of the conditions of independent operation. The bill provides more flexibility in the development of rules to accommodate new types of pesticides used for preventive treatments of subterranean termites in new construction. And lastly, the bill expands the products a Limited Commercial Landscape Maintenance (LCLM) certificate holder may apply to include fungicides and allows the LCLM certificate holder to provide proof of insurance once he/she has passed the certification examination.

In regards to mosquito control, the bill clarifies that the exemption to regulation under the pest control law applies only to those programs established and operated in accordance with the provisions of the mosquito control law.

The bill establishes the Farm to Fuel grants program to provide grants for research, development and demonstration of commercial applications of bioenergy technology. A Florida Farm to Fuel Advisory Council is established to provide guidance to the Commissioner of Agriculture regarding the production of bioenergy in the state. Additionally, the bill provides a credit against the tax imposed of twenty cents per gallon of ethanol or biodiesel produced using Florida-grown commodities.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council. The bill provides for all members of the Soil and Water Conservation Council to be voting members. And lastly, the bill removes the words “Form 51” in reference to the Rabies Vaccination Certificate to conform to federal law.

The bill has no apparent fiscal impact on state or local government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: By requiring all identification cardholders to be employees of a pest control business licensee, only persons who are adequately trained and supervised may apply pest control substances.

Additionally, the implementation of the Farm to Fuel Program allows agricultural producers to convert products deemed as waste into a profitable commodity.

Provide limited government: The bill authorizes the Department of Agriculture and Consumer Services and the Department of Revenue to promulgate rules relating to the implementation of the Farm to Fuel Program and the associated tax credit.

Ensure lower taxes: The bill provides for a tax credit for taxpayers who produce either ethanol or biodiesel at a facility located in the state using Florida-grown commodities.

B. EFFECT OF PROPOSED CHANGES:

Pest Control

Currently, each employee who performs pest control for a pest control licensee in Florida is required¹ to have an identification card issued by the Department of Agriculture and Consumer Services (department). Additionally, the law requires the identification card holder to be an employee, as defined by s. 482.021(7), F.S., and prohibits independent contractors from being issued identification cards.²

The Bureau of Entomology and Pest Control (bureau), within the department reports that recent investigations have determined that an unknown number of business licensees have been obtaining identification cards for individuals who are operating as independent business entities. Independent business entities who secure their own clients, collect money for their services, and provide their own vehicles and equipment, operate without the level of supervision and training typical of identification cardholders who are truly employees of pest control licensees. The department fears the lack of supervision and training provided to independent business entities, as well as a lack of liability insurance, present a danger to public safety.

The current definition of independent contractor requires several elements of independent activity be present before disciplinary action can be taken against a business licensee and the identification card of the independent contractor can be revoked. The department reports this increases the level of difficulty for developing evidence for a disciplinary action, as well as allowing business licensees to continue to provide identification cards to independent contractors.

The bill amends the definition of "employee" to clarify this person is not independent of, but under the direct control of, a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee, as defined in s. 482.021(7), F.S. Additionally, the bill amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation.

¹ s. 482.091(1)(a), F.S.

² "Independent contractor" is defined in s. 482.021(12), F.S.

The department currently has rule-making authority³ regarding the application of pesticides used in the preventive treatment for subterranean termites for new construction. This provision was established when the primary treatment was the application of large volumes of insecticides to the soil during construction. Since that time, new treatment methods have been developed, such as baiting systems, non-repellant termiticides, and direct application to wood. The bill provides more flexibility in the development of rules regarding these types of treatments.

Florida law⁴ establishes a certification category for persons who wish to apply certain low-risk pesticides to plant beds and ornamentals as part of landscape maintenance activities. Only persons who acquire this certification are authorized to perform the application. To date, approximately 3,200 Limited Commercial Landscape Maintenance (LCLM) certifications have been issued to persons who work in the landscape maintenance industry and apply pesticides as part of their services. Chapter 482, F.S., places restrictions on the areas and types of pesticides certificate holders may apply. As technology has improved and new products have been developed, current law limits the ability of the certificate holders to perform landscape maintenance activities properly. The bill expands the types of products the certificate holders may apply to include fungicides.

Additionally, current law requires those seeking certification to obtain proof of insurance **prior** to passing the examination. According to the department, this requirement places an undue burden on applicants. The department estimates approximately 30,000 persons in the industry require LCLM certification. Voluntary compliance is, in part, hindered by current statutory requirements. The bill amends current law to require proof of insurance **after** passing the examination. The department believes this will result in increased compliance with the Florida Structural Pest Control Act and increase the number of individuals who will benefit from the pesticide application and safety training provided as part of the certification process.

Mosquito Control

Mosquito control is, in general, regulated by Chapter 388, F.S. Section 482.211, F.S., deals with the establishment and regulation of mosquito control programs operated by local governments. According to the department, a number of private companies have recently begun advertising mosquito control application services for consumers.

The bill clarifies that the exemption to regulation under Chapter 482, F.S., applies only to those programs established and operated in accordance with the provisions of Chapter 388, F.S. The department believes this will prevent unlicensed and untrained operators from conducting pest control activities under the guise of mosquito control.

Florida Food Safety and Food Defense Advisory Council

During the 2003 legislative session, the Florida Food Safety and Food Security Advisory Council (council) was created. The council had previously existed as an *ad hoc* task force created by the Commissioner of Agriculture to ensure the safety of Florida's food supply in the aftermath of 9-11 and the Mad Cow disease outbreak in Europe. The council is composed of representatives from every facet of the food industry: production, processing, distribution, sales, consumers, food industry groups, experts in food safety, agencies charged with food safety oversight, and legislative representatives. The council provides a forum for presenting, investigating, and evaluating issues of current importance in food safety. During the course of its meetings, it came to the attention of the council that, in many nations, "food security" refers to maintaining an availability of an adequate supply of food. "Food defense" is used to refer to the "protection" of the food supply. The federal government is in the process of making the necessary changes to conform with those in use internationally and encourages states to do the same.

³ s. 482.051(5), F.S.

⁴ s. 482.156, F.S.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council.

Florida Farm to Fuel Act

The United States Environmental Protection Agency (EPA) recently developed new standards paving the way for the Renewable Fuel Standard Program. This program focuses on reducing vehicle emissions and reducing the United States dependency on foreign energy sources by increasing the use of fuels produced from American crops by 2012. The new standards complement the Energy Policy Act of 2005, which requires that 2.78 percent of the gasoline sold or dispensed to U.S. motorists in 2006 be renewable fuel. Various renewable fuels can be used to meet the requirements of the program, including ethanol and bio-diesel.⁵

Due to the vast amount of farm acreage, combined with a climate that allows crop production year round, Florida is well suited to producing energy from crops. The bill establishes the Farm to Fuel Grants Program (program) within the department. The purpose of the program is to provide grants for research, development, and demonstration of commercial applications of bioenergy technology. The bill provides criteria for awarding grants.

The bill also establishes a Florida Farm to Fuel Advisory Council to provide advice and counsel to the Commissioner of Agriculture. The bill provides for the Commissioner of Agriculture to appoint members to the council representing the agriculture industry, researchers, fuel suppliers, technology manufacturers, environmental interests, or others who may be a stakeholder in the program. The department is given rule-making authority to implement the provisions of the program.

The bill also provides a tax credit for a taxpayer producing ethanol or biodiesel at a facility located in the state. The credit is equal to 20 cents per gallon of ethanol or biodiesel produced at the facility using Florida-grown commodities. The Department of Revenue is given rule-making authority to implement the provisions of the tax credit entitlement. The bill further provides for a repeal of the tax credit on July 1, 2010.

Soil and Water Conservation Council

Also during the 2003 legislative session, the Agricultural Water Policy Group was integrated into the Soil and Water Conservation Council (council) by adding twelve non-voting *ex officio* members. These members represented the same interest groups that were represented in the Water Policy Group and are appointed by recommendations from the various interest groups.

In the two years since the integration, the council has become more diverse with a high level of participation from all members, voting or not. At the recommendation of the chair of the council, and with the support of the Commissioner of Agriculture, the bill provides for all members of the council to be voting members.

Rabies Vaccination

Due to a change in forms at the federal level, it is necessary to amend current Florida statutes to reflect the change at the state level. The bill removes the words "Form 51" in reference to the Rabies Vaccination Certificate.

C. SECTION DIRECTORY:

Section 1: Amends s. 482.021, F.S.; revising definitions.

Section 2: Amends s. 482.051, F.S.; revising requirements regarding rule adoption as it relates to pesticides for subterranean termites.

Section 3: Amends s. 482.091, F.S.; clarifying provisions related to identification cards for pest control personnel.

Section 4: Amends s. 482.156, F.S.; requiring certification of commercial landscape personnel; revising materials used; removing obsolete provisions relating to fees.

Section 5: Amends s. 482.211, F.S.; providing an exemption for local governments relating to mosquito control.

Section 6: Amends s. 500.033, F.S.; renaming the Florida Food Safety and Food Security Advisory Council.

Section 7: Creates s. 570.954, F.S.; creating the Florida Farm to Fuel Act; providing findings; creating a grant program; providing criteria for grant distribution; establishing an advisory council; and, authorizing the Department of Agriculture and Consumer Services to adopt rules relating to implementation.

Section 8: Creates s. 220.192, F.S.; providing tax credits for certain producers of alternative fuel; authorizing the Department of Revenue to adopt rules relating to implementation; and, providing for future repeal of the tax credits.

Section 9: Amends s. 582.03, F.S.; revising the composition of the Soil and Water Conservation Council.

Section 10: Amends s. 828.30, F.S.; updating a reference to the Rabies Vaccination Certificate.

Section 11: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services, the fiscal impact of the tax credit is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The Department of Agriculture and Consumer Services is given rule-making authority relating to the implementation of the Farm to Fuel Grants Program.

The Department of Revenue is given rule-making authority relating to the implementation of the tax credit related to the Farm to Fuel Grants Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES