

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7075 CS      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
1) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Davis	Dixon
2) State Resources Council		Kaiser	Hamby
3)			
4)			
5)			

## 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 provides authorization to the department to develop a Farm-to-Fuel initiative to market and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

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. The bill removes the words “Form 51” in reference to the Rabies Vaccination Certificate to conform to federal law. The bill provides an exemption from food inspection for cane syrup. The bill includes a provision making it a felony to trespass on an agricultural chemicals manufacturing facility that is legally posted. And lastly, the bill designates the agricultural inspection station in Escambia County as the Austin Dewey Gay Agricultural Inspection station.

The bill has an indeterminate but minimal fiscal impact on state 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.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Pest Control**

Currently, each employee who performs pest control for a pest control licensee in Florida is required<sup>1</sup> 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.<sup>2</sup>

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.

The department currently has rule-making authority<sup>3</sup> 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 law<sup>4</sup> 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

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<sup>1</sup> s. 482.091(1)(a), F.S.

<sup>2</sup> “Independent contractor” is defined in s. 482.021(12), F.S.

<sup>3</sup> s. 482.051(5), F.S.

<sup>4</sup> s. 482.156, F.S.

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.

The bill eliminates an exemption allowing a yard worker to apply a pesticide at a property owner's residence using pesticides supplied by the property owner.

### **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.

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

### **Farm-to-Fuel**

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.<sup>5</sup>

The bill provides authorization to the department to develop a Farm-to-Fuel initiative to market and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

### **Food Safety**

The department is charged with inspecting and permitting food processors and food establishments to ensure a safe food supply for the people of the state. On occasion, the department exempts certain food products from the inspection process when the product does not present a serious health hazard.

The bill provides an exemption from inspection for cane syrup produced in the state as long as the syrup is labeled with the producer's name and address, product type, net weight or volume of product, and the statement, "This product has not been produced in a facility inspected and permitted by the Florida Department of Agriculture and Consumer Services."

### **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.

### **Trespassing**

Current law provides penalties for trespassing on certain agricultural facilities that are legally posted, such as commercial horticulture property and agriculture sites used for testing and research purposes. Recently, instances have been reported of trespassers at agricultural chemicals manufacturing facilities. However, because these facilities are patrolled by security guards who are not authorized to hold persons for offenses less than a felony, the trespassers are unable to be detained.

This legislation makes it a felony of the third degree to trespass on an agricultural chemicals manufacturing facility that is legally posted. The bill also provides a definition for "agricultural chemicals manufacturing facility."

### **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.

### **Implementation of Total Maximum Daily Loads (TMDLs)**

In 2005, there was a significant rewrite to the Florida Watershed Restoration Act. During this rewrite, incentives related to TMDLs were unintentionally eliminated.

The bill corrects a cross-reference and makes other technical changes to reestablish the incentives. The bill further provides that there is a presumption of compliance with state water quality standards for

those research sites funded by the Department of Environmental Protection (DEP), a water management district, or the department to develop or demonstrate interim measures or best management practices.

### **Inspection Stations**

The bill designates the agricultural inspection station in Escambia County as the “Austin Dewey Gay Memorial Agricultural Inspection Station” and directs the department to erect suitable markers.

#### **C. SECTION DIRECTORY:**

**Section 1:** Amends s. 403.067, F.S.; correcting a cross-reference and making technical changes related reestablishing incentives.

**Section 2:** Amends s. 482.021, F.S.; revising definitions.

**Section 3:** Amends s. 482.051, F.S.; revising requirements regarding rule adoption as it relates to pesticides for subterranean termites.

**Section 4:** Amends s. 482.091, F.S.; clarifying provisions related to identification cards for pest control personnel.

**Section 5:** Amends s. 482.156, F.S.; requiring certification of commercial landscape personnel; revising materials used; removing obsolete provisions relating to fees.

**Section 6:** Amends s. 482.211, F.S.; providing an exemption for local governments relating to mosquito control.

**Section 7:** Amends s. 500.033, F.S.; renaming the Florida Food Safety and Food Security Advisory Council.

**Section 8:** Amends s. 500.12, F.S.; providing an exemption from inspection for cane syrup with conditions.

**Section 9:** Creates s. 570.954, F.S.; authorizing a Farm-to-Fuel initiative between the Department of Agriculture and Consumer Services and the Department of Environmental Protection to market and promote the production and distribution of renewable energy.

**Section 10:** Amends s. 582.06, F.S.; revising the composition of the Soil and Water Conservation Council.

**Section 11:** Amends s. 810.09, F.S.; establishing a third degree felony for trespassing on an agricultural chemicals manufacturing facility with appropriate signage.

**Section 12:** Amends s. 810.011, F.S.; defines “agricultural chemicals manufacturing facility.”

**Section 13:** Amends s. 828.30, F.S.; updating a reference to the Rabies Vaccination Certificate.

**Section 14:** Designates an agricultural inspection station in Escambia County and provides direction for markers.

**Section 15:** Repeals subsection (11) of s. 482.211, F.S.

**Section 16:** 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:**

Indeterminate, minimal. See fiscal comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference (CJIC) has not considered the prison bed impact, if any, of the third degree felony in the bill. The bill creates a third degree felony for trespassing on an agricultural chemicals manufacturing facility which contains appropriate signage. Typically, the CJIC estimates a third degree felony that does not change the offense severity ranking chart will have an insignificant prison bed impact, absent any significant prior criminal history. Probation, a likely non-prison sanction, has an indeterminate but probably minimal fiscal impact.

## **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:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 17, 2006, the Agriculture and Environment Appropriations Committee adopted a strike-all amendment and an amendment to the strike-all to HB 7075. The strike-all amendment:

- Changed the hours of classroom training for commercial landscapers from 8 to 6 and eliminated the requirement for being in the landscape business for 3 years as an eligibility requirement to sit for the examination;
- Clarified that the exemption for mosquito control also applies to programs established by a special act;
- Removed the Farm to Fuel program and tax credit from the bill;
- Included a provision making it a felony to trespass on an agricultural chemicals manufacturing facility that is legally posted;
- Corrected cross-references related to total maximum daily loads that were unintentionally eliminated during the rewrite of the Florida Watershed Restoration Act in 2005;
- Repealed an exemption allowing a yard worker to apply a pesticide at a property owner's residence using pesticides supplied by the property owner; and
- Designated the agricultural inspection station in Escambia County as the "Austin Dewey Gay Agricultural Inspection Station."

The amendment to the strike-all amendment authorizes the department to develop a Farm to Fuel initiative to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

The analysis is drawn to bill as amended.