

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/CS/SB 1372

INTRODUCER: Commerce and Agriculture Committees

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 7, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute (CS) addresses the following issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the CS:

- Authorizes the department to issue biennial rather than annual pesticide registration renewals, effective on January 1, 2009;
- Authorizes the department to impose a late fee of \$25 per pesticide brand for each month a payment is late, not to exceed a total of \$250 per brand;
- Clarifies that registration requirements apply to each brand of pesticide;
- Updates statutory language relating to bottled water and bottled water plants to conform to federal regulations;
- Redefines the term “food establishment” to include tomato packinghouses;
- Updates terminology and the definitions of “dairy farm,” “pasteurized milk ordinance,” “imitation milk and imitation milk products,” “milk,” “milk products,” and “substitute milk and substitute milk products” to conform to the federal Grade “A” Pasteurized Milk Ordinance;
- Transfers the permitting for milk manufacturing plants from the Division of Food Safety to the Division of Dairy Industry;
- Removes a provision for the temporary permitting of milk haulers in order to be consistent with the federal Grade “A” Pasteurized Milk Ordinance;
- Clarifies state law with respect to the sale of manufactured milk products and cheese within the state;

- Repeals sections 591.27 through 591.34, F.S., to remove obsolete statutory language relating to the establishment, branding, and other requirements of seed trees;
- Creates the Consumer Fireworks Task Force within the department;
- Provides enhanced tomato food safety inspections on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers; and
- Authorizes the department to conduct research projects on citrus diseases recommended by the Florida Citrus Production Research Advisory Council, within the limits of appropriations made specifically for such purpose.

This CS amends sections 487.041, 500.03, 500.147, 502.012, 502.014, 502.053, 502.054, 502.091, 570.07, 570.48, and 570.481 of the Florida Statutes.

This CS repeals sections 591.27, 591.28, 591.29, 591.30, 591.31, 591.32, 591.33, and 591.34 of the Florida Statutes.

II. Present Situation:

Florida Pesticide Law

Chapter 487, F.S., the Florida Pesticide Law, protects people and the environment from the adverse effects of pesticides. The Department of Agriculture and Consumer Services (department) is the primary agency for administering state pesticide laws and regulations. Chapter 487, F.S., regulates the distribution, sale, and use of pesticides except as provided in ch. 388, F.S., relating to mosquito control, and ch. 482, F.S., relating to pest control.

Current law authorizes the department to collect annual renewal fees for pesticide registrations. Each year approximately 1,500 pesticide companies (registrants) submit applications and fees to register a total of approximately 13,000 pesticide brands. The annual renewal process requires commitments of staff resources by both registrants and the department. The Pesticide Registration Section of the department recently reduced clerical personnel by 25 percent, even though demands of annual registration renewals have caused a backlog in filing and in identifying non-complying pesticide brands.

Registrants currently have little incentive to submit their registration renewals on time. Current law does not include authorization for the collection of late fees for registration renewals. Roughly one-fourth of current pesticide registrants are late in submitting their annual renewal applications and fees, and some registrants submit their annual renewals as late as 6 to 8 months after the annual January renewal date. Late registrations delay the timely collection of funds, diminish the synchronicity of the registration renewal process, and reduce clerical staff efficiency.

Registration requirements currently apply to “every pesticide which is distributed, sold or offered for sale, except as provided...”¹ The term “every pesticide” has caused confusion among some registrants who do not realize that registration requirements apply to each brand of pesticide.

¹ Section 487.041(1), F.S.

Milk and Milk Products

The federal government's milk sanitation program is one of its oldest and most respected activities. Milk sanitation stems from two important public health considerations. First, nothing surpasses milk as a single source of the dietary elements needed for the maintenance of proper health, especially in children and older citizens. Second, milk has a potential to serve as a vehicle of disease and has, in the past, been associated with disease outbreaks of major proportions.

The incidence of milk borne illness in the United States has been sharply reduced in recent years. In 1938, milk borne outbreaks constituted 25 percent of all disease outbreaks due to infected foods and contaminated water. Despite the progress that has been made, occasional milk borne outbreaks still occur, emphasizing the need for continued vigilance at every stage of production, processing, pasteurization, and distribution of milk and milk products. The federal Grade "A" Pasteurized Milk Ordinance (PMO) is incorporated by reference in federal specifications for procurement of milk and milk products. It is used as the sanitary regulation for milk and milk products served on interstate carriers. The ordinance is also recognized by the Public Health Agencies, the milk industry, and many others as a national standard for milk sanitation.²

Currently, ch. 502, F.S., relating to milk and milk products, contains outdated definitions and terms that should be consistent with language in the federal Grade "A" Pasteurized Milk Ordinance. An additional inconsistency is that the Department of Agriculture and Consumer Services is currently authorized to issue temporary permits for milk haulers which the federal ordinance does not allow.

Six Florida facilities that process manufactured milk products, primarily cheese, are currently permitted and inspected by the Division of Food Safety under the provisions of ch. 500, F.S., relating to food products. The Division of Dairy Industry personnel have more expertise in food products containing milk as the primary ingredient, and these facilities more logically fit under ch. 502, F.S., relating to milk and milk products.

Establishment, Branding, and Other Requirements of Seed Trees

The department uses seed trees to collect pine cones or to grow seedlings in a nursery. Sections 591.27 through 591.34, F.S., pertain to seed trees located on private lands. An owner of seed trees would have the trees designated and marked as seed trees and "such designating and marking shall by law operate as a dedication, transfer and conveyance of the legal title to such trees to the Department of Agriculture and Consumer Services of the state without further words or evidence of transfer of title."³ The availability of seed makes the process of collecting seed less complicated, and makes entering private landowners' property and designating such trees unnecessary. The department has not implemented these statutory provisions because it currently maintains two seed orchards; one at Blackwater River State Forest and one at Withlacoochee State Forest. The department also has a seedling nursery and cooperates with other public entities to collect seeds. Therefore, these statutory provisions are obsolete and unnecessary.

Fireworks

² U.S. Food and Drug Administration, Center for Food Safety & Applied Nutrition, Grade "A" Pasteurized Milk Ordinance, 2002, available at <http://www.cfsan.fda.gov/~ear/pmo01.html> (last visited 27 Feb. 2007).

³ Section 591.28, F.S.

Current law allows wholesalers, distributors, and manufacturers registered with the State Fire Marshal to sell fireworks at wholesale if the purchaser meets one of the exceptions enumerated under the fireworks code, including use by agricultural works and fish hatcheries to frighten birds. The Department of Agriculture and Consumer Services governs this provision pursuant to their rules.

The current fireworks statute presents problems for agricultural users, consumers and enforcement officials for several reasons, including:

- Local government regulation of the agricultural uses authorized by s. 791.012, F.S., are inconsistent with legitimate agricultural purposes;
- The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;
- There is a need for better training and education concerning the safe use of consumer fireworks;
- A mechanism is needed to help local governments fund cleanup following the use of consumer fireworks on public property;
- There is a need for consumer education relating to safety standards in the use of consumer fireworks;
- There is a need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and
- The state would benefit from additional funding for the training and education of fire officials.

Food Safety Inspections

The Centers for Disease Control and Prevention (CDC) defines a food borne-disease outbreak as “an incident in which two or more persons experience a similar illness resulting from the ingestion of a common food.” Food safety is an increasingly important public health issue. The Florida Department of Agriculture and Consumer Services, the Food and Drug Administration, United States Department of Agriculture and other government agencies work hard to protect our food supply. The department’s Division of Food Safety is responsible for assuring the public of a safe, wholesome and properly represented food supply through permitting and inspection of food establishments, inspection of food products, and performance of specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from farm gate through processing and distribution to the retail point of purchase.

There are many opportunities for food to become contaminated as it is produced and prepared. Many foodborne microbes are present in healthy animals (usually in their intestines) which are raised for food. Meat and poultry carcasses can become contaminated during slaughter by contact with small amounts of intestinal contents. Similarly, fresh fruit and vegetables can be contaminated if they are washed or irrigated with water that is contaminated with animal manure or human sewage. In food processing, other foodborne microbes can be introduced from infected humans who handle the food, or by cross contamination from some other raw agricultural product.

The cost of foodborne illness to the nation, based on direct medical expenses, lost wages, lost productivity, and industry loss of tainted food products, is estimated at \$1 billion to \$10 billion

annually. The reported incidence of foodborne illness is on the rise. To date, 18 states have confirmed cases of salmonella that may be associated with tomatoes. Federal and state government investigations have pointed to certain packinghouses as possible sources of contamination and outbreaks of salmonella infection associated with eating tomatoes. While tomato packinghouses are currently being inspected for the grade of their tomatoes, the department does not inspect them for the presence of illness-causing microbes.

III. Effect of Proposed Changes:

Section 1 amends s. 487.041, F.S., to require pesticide registrants to file the following information with the department:

- The name, business mailing address, and street address of the registrant.
- The name of the brand of pesticide.
- An ingredient statement and a complete copy of the labeling accompanying the brand of the pesticide, which must conform to the registration, and a statement of all claims to be made for the pesticide, including directions for use and a guaranteed analysis showing; the names and percentages by weight of each active ingredient; the total percentage of inert ingredients; and the names and percentages by weight of each “added ingredient.”

This section also authorizes the Department of Agriculture and Consumer Services (department) to issue biennial rather than annual pesticide registration renewals, and to charge a biennial fee for each brand of pesticide, effective January 1, 2009. Provides that registrations issued in an odd-numbered year be assessed a fee of \$500 per brand of pesticide and a fee of \$200 for each special local need label and experimental use permit. Such registration would expire December 31 of the following year. The CS provides that registrations issued in an even-numbered year be assessed a fee of \$250 per brand of pesticide and a fee of \$100 for each special local need label and experimental use permit. This registration would expire December 31 of that year.

The CS authorizes the department to impose a late fee of \$25 per brand for each month a payment is late, not to exceed a total of \$250 per brand. The CS requires the fee to be paid by the registrant before the renewal certificate for the registration of the brand of pesticide is issued. Requires the proceeds of fees to be deposited into the General Inspection Trust Fund and used by the department to administer ch. 487, F.S. The CS amends language in this section to conform to the fee and renewal changes. The CS clarifies that registration requirements apply to each brand of pesticide.

Section 2 amends s. 500.03, F.S., which contains the current definition of “bottled water,” to accurately reflect the date contained in the federal statutory cite where the term is defined. The CS updates the date from 1996 to 2006. This section also amends the definition of “food establishment” to include tomato packinghouses.

Section 3 amends s. 500.147, F.S., which describes the proper processing of bottled water at bottled water plants, to accurately reflect the date contained in the federal statutory cite where the term is defined. The CS updates the date from 1996 to 2006.

Section 4 amends s. 502.012, F.S., to update the definitions of “dairy farm,” “pasteurized milk ordinance,” “imitation milk and imitation milk products,” “milk,” “milk products,” and “substitute milk and substitute milk products” to conform to the federal Grade “A” Pasteurized Milk Ordinance. The CS amends current law to insert the term ‘Grade “A”’ before “pasteurized milk ordinance” to reflect the proper name of the ordinance.

Section 5 amends s. 502.014, F.S., to remove the term, “low-fat cottage cheese” in order to reflect current terminology used within the dairy industry and by the federal government.

Section 6 amends s. 502.053, F.S., to transfer the permitting for milk manufacturing plants from the Division of Food Safety to the Division of Dairy Industry. The CS updates current law to reflect the proper name of the federal Grade “A” Pasteurized Milk Ordinance. The CS also removes a provision for the temporary permitting of milk haulers in order to be consistent with the federal PMO, which does not allow this.

Section 7 amends s. 502.054, F.S., to reflect the proper name of the Grade “A” Pasteurized Milk Ordinance.

Section 8 amends s. 502.091, F.S., to clarify current law with respect to the sale of pasteurized manufactured milk products and cheese made from pasteurized milk within the state. Clarifies where cheese made from pasteurized milk and cheese made from raw milk can be sold.

Section 9 repeals ss. 591.27, 591.28, 591.29, 591.30, 591.31, 591.32, 591.33, and 591.34, Florida Statutes, regarding the establishment, branding, and other requirements related to seed trees.

Section 10 creates the Consumer Fireworks Task Force within the department for the purpose of studying issues related to fireworks. The CS provides that the task force shall consist of the following seven members:

- Two members appointed by the President of the Senate;
- Two members appointed by the Speaker of the House of Representatives;
- Two members appointed by the Commissioner of Agriculture; and
- One member appointed by the Chief Financial Officer.

The CS also provides that members shall serve without compensation, except that members are entitled to per diem and travel expenses incurred in the performance of their duties. The CS further provides that staffing for the task force shall be provided by the department. The CS requires a report of the recommendations and findings of the task force to be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2008, after which the task force will be abolished.

Section 11 amends s. 570.07, F.S., to allow the department to use any of its trained personnel in the various division of the department to perform the regulatory and inspection services related to agriculture. The CS adds enhancing the food safety of tomatoes to the duties of the department as well as establishing and adopting requirements for enhancing food safety in cooperation with appropriate agencies.

Section 12 amends s. 570.48, F.S., to authorize the Division of Fruit and Vegetables to perform food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers. The division would work with the Florida tomato industry in creating and implementing good agricultural practices guidelines and standards and would implement an annual audit/inspection program to ensure compliance.

Section 13 amends s. 570.481, F.S., to require that fees collected by the department to cover the costs of tomato-related inspections be deposited into the General Inspection Trust Fund and be used for tomato-related inspections, education, and research.

Section 14 requires the department to conduct or cause to be conducted those research projects on citrus diseases which are recommended by the Florida Citrus Production Research Advisory Council. Topics will include, but will not be limited to, citrus canker and citrus greening. Research projects will be conducted within the limit of appropriations made specifically for such purpose.

Section 15 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

RECURRING REVENUES:

Biennial fee schedule- Renewal fees for pesticide registrations will be collected once every 2 years, rather than once per year. The Department of Agriculture and Consumer Services (department) does not anticipate any net changes in total revenues for registration fees collected. Revenues will be deferred over the 2-year registration cycle and deposited to the General Inspection Trust Fund for use by the department in carrying out the provisions of ch. 487, F.S.

Division of Fruit and Vegetables – Fees will be collected by the Division of Fruit and Vegetables for food quality inspections of tomato packing houses and would come from an estimated hourly fee of \$75.00 which would be charged to each individual packing

facility and farm where the audits are performed. The division estimates 800 audit hours at packing facilities (8 hours at 100 facilities) and 800 hours of audits at farms (200 farms at 4 hours per farm). Each audited entity (packing house or farm) will be responsible for the charges incurred at their facility. The collected fees would be deposited into the General Inspection Trust Fund and utilized to support the program.

	FY 2007-08	FY2008-09	FY 2009-10
Fees	\$120,000	\$120,000	\$120,000

NON-RECURRING REVENUES:

Late fees- Imposing late fees could result in a net increase in General Inspection Trust Funds totaling as much as \$223,312 during the initial registration cycle in 2008. The level of revenues would be expected to decline significantly in subsequent registration cycles, since late fees would only be collected once every 2 years and since registrants who have experienced late fees would likely become more proactive in registering on time. The primary benefits of late fees would be to help synchronize the registration renewal process and to bring in revenues earlier in the fiscal year.

B. Private Sector Impact:

Biennial fee schedule – There is no fiscal impact on the pesticide industry.

Late fees – Implementation of the late fee will only affect those companies that submit their renewal fees after the January 31st deadline of the renewal year.

Permitting for milk manufacturing plants – Transferring the permitting from the Division of Food Safety to the Division of Dairy Industry will result in a reduction of costs for facilities meeting the specified criteria since the Division of Dairy Industry does not have any permitting fees for facilities of this type.

Fireworks – Sellers of consumer fireworks would need to comply with any new standards concerning tents and other temporary retail facilities that may be implemented from recommendations of the Fireworks Task Force.

Tomato inspections – Florida tomato producers and packers would pay the full cost of the tomato Good Agricultural Program and inspection.

C. Government Sector Impact:

RECURRING EXPENDITURES:

Biennial fee schedule and late fee – There would be no additional expenditures incurred in the conversion to a biennial fee schedule or implementation of a late fee.

Division of Fruit and Vegetables – The fees levied for the inspection of tomato green houses, packing houses and repackers are estimated to cover the cost to the department.

	FY 2007-08	FY2008-09	FY 2009-10
Inspection Program:			
Salaries and Benefits	100,000	100,000	100,000
Training	15,000	15,000	15,000
Travel	5,000	5,000	5,000
Total	\$120,000	\$120,000	\$120,000

NON-RECURRING EXPENDITURES:

Biennial fee schedule and late fee – The initial conversion to a biennial fee schedule and implementation of a late fee will result in a \$5,000 one-time expenditure to modify the existing database for tracking pesticide registration activation and renewal and for the e-commerce site for revenue collection.

Consumer Fireworks Task Force – Members are entitled to per diem and travel expenses incurred in the performance of their duties. Staffing for the task force would be provided by the department. After submitting the report by January 15, 2008, the task force would be abolished.

	FY 2007-08	FY2008-09	FY 2009-10
Meetings for Seven People			
5 Meetings/ 2 days each	14,000		
Facilitator / \$400/day	4,000		
Facilitator Expenses	1,000		
Department Staff	4,000		
Printing	1,000		
Meeting Rooms	3,000		
Total	\$27,000	0	0

	FY 2007-08	FY2008-09	FY 2009-10
TOTAL EXPENDITURES	\$152,000	\$120,000	\$120,000

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
