

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 651

Department of Agriculture and Consumer Services

SPONSOR(S): Boyd

TIED BILLS:

IDEN./SIM. BILLS: SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	<u>7 Y, 0 N</u>	<u>Kaiser</u>	<u>Reese</u>
2) <u>Environment & Natural Resources Council</u>	<u>12 Y, 0 N, As CS</u>	<u>Kaiser</u>	<u>Hamby</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u>Davila</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

CS/HB 651 addresses a variety of issues relating to the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Authorizes a two-year registration cycle for pesticide brands effective January 1, 2009.
- Authorizes the department to impose late fees of \$25 per pesticide brand for each month a payment is late, not to exceed a total of \$250 in additional fees per pesticide brand.
- Revises date references to the Code of Federal Regulations (C.F.R.) regarding bottled water and bottled water plants.
- Revises the definition of "food establishment" to include tomato packinghouses.
- Revises definitions of certain milk products to coincide with the definitions reflected in the federal Grade "A" Pasteurized Milk Ordinance, amended in 2005.
- Transfers the permitting of milk manufacturing plants to the department's Division of Dairy Industry.
- Abolishes the practice of issuing temporary permits to milk haulers because the federal Grade "A" Pasteurized Milk Ordinance of 2005 no longer recognizes those permits.
- Clarifies the venues in which manufactured milk products and cheese may be sold. The bill also modifies state law to mirror federal law regarding the sale of cheese made from raw milk.
- Deletes sections of law relating to the establishment, branding and other requirements for seed trees. These sections of law have never been implemented and are, therefore, unnecessary.
- Provides for more stringent inspections on tomato farms and in tomato packinghouses. Fees collected related to these inspections will be deposited into the General Inspection Trust Fund to be used for tomato-related activities.
- Instructs the department to conduct, or cause to be conducted, research projects recommended by the Florida Citrus Production Research Advisory Council, within the limits established by the funds specifically appropriated for this purpose.
- Renames the No. 2 packing house at the Palatka State Farmers' Market as the E.H. "Gene" Downs Building and instructs the department to erect suitable markers.
- Creates the Consumer Fireworks Task Force, charged with reviewing and evaluating issues relating to the proper use of fireworks, regulation of temporary sale facilities for consumer fireworks, zoning classifications for placement of retail facilities and regulation of hours and location for use of consumer fireworks, studying funding options for fire official training and education, as well as studying funding options for clean-up of expended consumer fireworks products.

The bill appears to have an indeterminate fiscal impact on state and local governments. The effective date of this legislation is July 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/26/2007

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill authorizes the Department of Agriculture and Consumer Services (department) to impose a late fee for registrants failing to register pesticide brands in a timely manner.

Promote personal responsibility: The bill changes the registration cycle for pesticide brands from a yearly to a biennial registration in an effort to reduce paperwork for both the department and the registrants. The bill provides for more stringent inspections for tomato farms and packinghouses, thus safeguarding the quality of the product provided to the public. The bill creates the Consumer Fireworks Task Force charged with, among other things, reviewing the proper use of consumer fireworks, as well as issues related to training for fire officials.

B. EFFECT OF PROPOSED CHANGES:

Pesticide Registration

Current law¹ authorizes the Department of Agriculture and Consumer Services (department) to collect annual renewal fees for pesticide registration, which number approximately 1,500 applicants registering 13,000 pesticide brands annually. The Pesticide Registration section has reduced its staff by 25% in the past year; however the continuance of annual registration renewals has created a backlog in filing, as well as identifying non-compliant pesticide brands.

The bill proposes a two-year registration cycle. The proposed biennial registration fee is double the annual fee. For new pesticide product brand registration applications, registrants will pay for either a one-year or two-year registration depending on when the new pesticide product brand application is submitted. New registrations submitted in an odd year will pay the two-year fee; new registrations submitted in an even year will pay a one year fee. The department anticipates the implementation of this proposal will result in a reduction in workload, enabling staff to concentrate on backlogged files and identifying non-compliant pesticide brands.

Additionally, the bill authorizes the department to impose late fees of \$25 per brand for each month a payment is late, not to exceed a total of \$250 per brand. Currently, there is no incentive to submit renewals on time since the department doesn't have the authority to collect late fees. The department's Bureau of Pesticides estimates that approximately 25% of current registrants are late in submitting their annual renewal applications and fees, with some registrants submitting their renewals as late as six to eight months after the January renewal date. By imposing late fees, the department anticipates a more timely collection of revenue as well as increased staff efficiency.

Lastly, in regards to pesticide registration, the bill clarifies that registration requirements apply to each brand of pesticide, rather than every pesticide.

Bottled Water

The bill revises a date reference to the Code of Federal Regulations (C.F.R.). The federal regulations are updated periodically making it necessary for the state to update the statutory reference to the C.F.R. as well.

Milk Products

The bill revises definitions in statute to coincide with the definitions reflected in the federal Grade "A" Pasteurized Milk Ordinance, which was amended in 2005.

¹ s. 487.045, F.S.

Currently, the permitting of milk manufacturing plants falls under the jurisdiction of the department's Division of Food Safety. The bill transfers that authority to the department's Division of Dairy. The bill also abolishes the practice of issuing temporary permits to milk haulers because the federal Grade "A" Pasteurized Milk Ordinance of 2005 no longer recognizes those permits.

Current law is unclear regarding the venues within the state where manufactured milk products and cheese may be sold. The bill spells out that these items may be sold as retail in food service establishments licensed under chapter 381, F.S.², food establishments as defined in chapter 500, F.S.³, or public food service establishments as defined in chapter 509, F.S.⁴ Additionally, the bill modifies state law to mirror federal law regarding the retail sale of cheese made from raw milk.⁵ This change allows cheese made from raw milk to be sold at retail to the final consumer or to specified food service establishments provided the cheese is aged more than 60 days at a temperature above 35° F.

Forestry

The bill deletes sections of law relating to the establishment, branding and other requirements for seed trees. These sections of law have never been implemented and are, therefore, unnecessary. Genetically improved seed now comes from seed orchards that produce trees with greater disease resistance and growth than those occurring naturally.

Consumer Fireworks Task Force

Current statutory authority⁶ for the regulation of fireworks in the state is assigned to the Division of the State Fire Marshall of the Department of Financial Services, however much of the enforcement of this law is delegated to local fire and law enforcement departments. Items such as sparklers, snakes, small smoke devices, trick noisemakers and certain other novelties are allowed for sale to the general public. Firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, and any fireworks containing explosive or flammable compounds may only be purchased by authorized persons⁷ who have obtained a permit from the county in which the fireworks are to be displayed. According to a report issued by the Senate Committee on Banking and Insurance⁸ in November 2004, approximately 65 cities and 10 counties have enacted ordinances providing for stricter enforcement of fireworks and sparklers sales. The report states, "...the decision in 2002 by the Third District Court of Appeal in *State v. Miketa*, 824 So.2d (Fla. 3rd DCA 2002) has rendered the fireworks law virtually unenforceable..."

According to the report, "the *Miketa* case involved the criminal prosecution of an individual for the illegal sale of fireworks to an undercover detective in violation of s. 791.04, F.S. The State argued that when a purchaser of fireworks executes an affidavit (declaring that the purchaser meets one of the statutorily provided exemptions for sales under s. 791.04, F.S.), the seller of the fireworks must request further documentation to establish the transaction is, in fact, exempt. "

The report goes on to say, "the decision of the *Miketa* case has rendered the proscriptions against selling illegal fireworks "meaningless" according to the Director of the State Fire Marshall's office.⁹ This is because fireworks sellers routinely use these affidavits and require buyers to sign these forms "falsely", stating that they are purchasing fireworks under one of the exemptions when in fact they are not, according to the Director and other fire officials. Since the affidavit is not verified, virtually anyone can purchase illegal fireworks. These officials further state that they do not know of any successful prosecutions which have occurred under the fireworks law."

² Detention facilities, child care facilities, schools, institutions, civic or fraternal organizations, bars and lounges and facilities used as temporary food events, mobile food units, and vending machines.

³ Factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail.

⁴ Restaurants

⁵ C.F.R. part 58 (2006)

⁶ Chapter 791, F.S.

⁷ s. 791.02, F.S.

⁸ *Enforcing the Ban on the Retail Sale of Fireworks*, Interim Project Report 2005-108, Senate Committee on Banking and Insurance

⁹ Memorandum to committee staff from Randall Napoli, Director, October 25, 2004.

Legislative findings in this bill agree that:

- there is a need for better training and education regarding the safe use of consumer fireworks;
- the state regulation of fireworks provides an insufficient definition of consumer fireworks and related products used by consumers;
- there should be a mechanism to help local governments fund the clean-up following the use of consumer fireworks on public property;
- local government regulation of the agricultural uses authorized by s. 791.012, F.S., are inconsistent with legitimate agricultural purposes;
- there is a need for consumer education regarding the safety standards in the use of consumer fireworks;
- there is a need for standards regarding temporary retail facilities selling consumer fireworks; and,
- the state would benefit from additional funding for the training and education of fire officials.

The bill creates the Consumer Fireworks Task Force (task force) within the Department of Agriculture and Consumer Services. The task force is charged with reviewing issues relating to the use of and proper use of consumer fireworks, regulation of sales and of temporary sale facilities for consumer fireworks, regulation of the hours and location of the use of consumer fireworks, the property zoning classification for sales facilities for consumer fireworks, as well as studying funding options for fire official training and education and funding options for clean up of expended consumer fireworks products.

The task force shall be comprised of eight members. The Speaker of the House of Representatives will appoint one person representing municipal government and one person representing the industry. The President of the Senate will appoint one person representing county government and one person representing the industry. The Commissioner of Agriculture will select one person from the Division of Forestry and one person representing industry. His third appointment has no designation. The Chief Financial Officer has one undesignated appointment. The task force must choose a chair and vice-chair from its membership.

The bill provides for the members of the task force to serve without compensation; however, they will be entitled to per diem and travel expenses. The department shall provide staffing for the task force.

After reviewing and evaluating the issues set forth in the bill, and taking public testimony, the bill requires a report of the recommendations and findings of the task force be submitted to the Legislature by January 15, 2008. Upon submission of the report, the bill calls for the abolishment of the task force.

The bill also provides that no new permanent retail facilities will be constructed and no new local ordinances will be passed until the task force completes its work and the legislature has the opportunity to address the recommendations of the task force during the 2008 legislative session. This preemption allows for new retail facilities that have received site plan approval or started construction prior to March 8, 2007. It also provides that the number of permits issued after March 8, 2007 to temporary retail sales facilities shall not exceed the number of permits issued for such facilities for the previous calendar year.

Tomato Inspections

The recent illnesses and deaths involving E. coli in spinach have brought to the forefront the importance of safe handling of our food products. Fresh fruit and vegetables may become contaminated if they are washed or irrigated with water that has become contaminated with animal manure or human feces. In food processing, other food borne microbes can be introduced from infected humans who handle the food or by cross-contamination from some other raw agricultural product. While tomato packinghouses are currently inspected for the grade of their tomatoes, the departments' Division of Fruit and Vegetables (division) does not inspect them for the presence of ill-causing microbes. For the past two years, the Florida Tomato Exchange has been proactive in

developing Tomato Good Agricultural Practices (T-GAP) for farms and greenhouses and Tomato Best Management Practices (T-BMP) for tomato packing houses and post-harvest handling. Recently, the Florida Tomato Exchange adopted the T-Gaps and T-BMPs for voluntary implementation by the industry.

The bill authorizes the division to perform food safety inspections, under the T-GAP inspection program, on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers. The bill directs the division to work with the Florida tomato industry in creating and implementing good agricultural practices, guidelines and standards and to implement an annual audit and inspection program to ensure compliance. The fees collected by the department, covering the costs of tomato-related inspections, shall be deposited into the General Inspection Trust Fund and used for tomato-related inspections, education, and research.

Florida Citrus Production Research Advisory Council

Florida has been battling citrus canker, a bacterial disease which is one of the more economically damaging citrus disorders causing canker-like lesions on citrus foliage, stems, and fruit, since 1995. Over the ensuing years, through eradication programs, law suits and hurricanes, canker has taken a huge toll on the citrus industry in Florida. In the fall of 2006, Florida's citrus industry was delivered another blow when Huanglongbing, also known as citrus greening or yellow dragon disease, was identified in south Miami-Dade County. Citrus greening may be the most serious citrus disease in the world. There is no place in the world where citrus canker or greening is well established that they are under completely successful management.

The bill instructs the department to conduct, or cause to be conducted, research projects on citrus diseases, including, but not limited to, citrus canker and citrus greening, which are recommended by the Florida Citrus Production Research Advisory Council. The bill clarifies this research is to be done with funds specifically appropriated for this purpose.

C. SECTION DIRECTORY:

Section 1: Amends s. 487.041, F.S.; revising registration requirements for brands of pesticides sold in the state; providing an expiration date for registration of brands of pesticides; providing for late fees for brands of pesticides not registered in timely fashion; providing for biennial registration of brands of pesticides; revising the registration fee; and, providing for fees to be deposited into the General Inspection Trust Fund.

Sections 2 & 3: Amends ss. 500.03, and 500.147, F.S.; updating reference to Code of Federal Regulations (C.F.R.), which was amended in 2006; and revising the definition of food establishment.

Section 4: Amends s. 502.012, F.S.; revising definitions.

Section 5: Amends s. 502.014, F.S.; revising the department's rule-making authority relating to lowfat cottage cheese; and, conforming terminology.

Section 6: Amends s. 502.053, F.S.; revising permitting requirements for certain milk plants; and, deleting a provision authorizing the department to issue a temporary permit to milk haulers.

Section 7: Amends s. 502.054, F.S.; conforming terminology.

Section 8: Amends s. 502.091, F.S.; clarifying provisions governing the sale of milk and milk products; specifying the types of food establishments at which such products may be sold; and, providing requirements for the sale of cheese made from raw milk.

Section 9: Amends s. 570.07, F.S.; revising the duties of the department.

Section 10: Amends s. 570.48, F.S.; revising the duties of the Division of Fruit and Vegetables.

Section 11: Amends s. 570.481, F.S.; providing for fees collected related to tomato inspections to be deposited into the General Inspection Trust Fund and used for tomato-related activities.

Section 12: Repeals ss. 591.27-591.34, F.S.; relating to the designation, marking and cutting of seed trees.

Section 13: Authorizes the department to conduct research related to citrus diseases, within limits of funds appropriated specifically for that purpose.

Section 14: Renames packinghouse at the Palatka State Farmers' Market; directs the department to erect markers designating name change.

Section 15: Creates the Consumer Fireworks Task Force within the department; providing legislative findings; providing for task force membership; providing for selection of chair and vice chair; providing for members to receive per diem and travel expenses but no compensation; directing the department to provide staffing for the task force; providing for a report to the Legislature by January 15, 2008, upon which the task force will be abolished; and, providing for preemption of sales facilities and local ordinances until such time as the Legislature acts upon the recommendations of the task force.

Section 16: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>(FY 07-08)</u> <u>Amount/FTE</u>	<u>(FY 08-09)</u> <u>Amount/FTE</u>	<u>(FY 09-10)</u> <u>Amount/FTE</u>
<u>Pesticide Registration</u>			
Recurring ¹⁰	-0-	-0-	-0-
Non-Recurring			
Indeterminate. See fiscal comments.			
<u>Tomato Inspection</u>			
Recurring ¹¹	120,000	120,000	120,000
Non-Recurring	-0-	-0-	-0-

2. Expenditures:

<u>Pesticide Registration</u>			
Recurring ¹²	-0-	-0-	-0-

¹⁰ Biennial fee schedule – Fees will be collected once every two years, rather than once per year. No net changes in total revenues for registration fees collected are anticipated. Revenues will be deferred over the two-year registration cycle and deposited into the General Inspection Trust Fund for use by the Department of Agriculture and Consumer Services in carrying out the provisions of Chapter 487, F.S.

¹¹ Fees will be collected by the Division of Fruit and Vegetables and will come from an estimated hourly fee of \$75 which will be charged to each individual packing facility and farm where the audits are performed. The division estimates 800 audit hours at packing facilities and 800 audit hours at farms. Each audited entity will be responsible for the charges incurred at their facility. The fees collected will be deposited into the General Inspection Trust Fund and used to support the program.

¹² Biennial fee schedule and late fees – There are no additional recurring expenditures incurred in the conversion to a biennial fee schedule or implementation of a late fee.

Non-Recurring ¹³	5,000 (FY 07-08) <u>Amount/FTE</u>	-0- (FY 08-09) <u>Amount/FTE</u>	-0- (FY 09-10) <u>Amount/FTE</u>
<u>Tomato Inspection</u> ¹⁴			
Recurring			
Indeterminate. See fiscal comments.			
Non-Recurring	-0-	-0-	-0-
<u>Consumer Fireworks Task Force</u>			
5 meetings/2 days each/7 members	14,000		
Facilitator/\$400 day	4,000		
Facilitator expenses	1,000		
Department staff	4,000		
Printing	1,000		
Meeting rooms	<u>3,000</u>		
 Total non-recurring expenses	 \$ 27,000	 \$ -0-	 \$ -0-

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

If recommended by the Consumer Fireworks Task Force, local governments may be asked to provide funds for clean-up following use of consumer fireworks on public property.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Pesticide Registration

Implementation of the late fee will only impact those companies that submit their renewal fee after the deadline of January 31 of the renewal year. The renewal notifications are mailed in November prior to the renewal year, allowing over 60 days for the companies to remit the renewal fees.

Consumer Fireworks Task Force

Pending recommendations of the task force, sellers of consumer fireworks may need to comply with any new standards set forth concerning tents and other temporary retail facilities.

D. FISCAL COMMENTS:

The cumulative impact of this bill is indeterminate, but there may be a net increase of revenue in the Department of Agriculture and Consumer Services' (departments') General Inspection Trust Fund (GITF).

¹³ Biennial fee schedule and late fees – 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 the e-commerce site for revenue collection.

¹⁴ The Division of Fruit and Vegetables currently operates two trust funds, the Citrus Inspection Trust (CITF) and the General Inspection Trust Fund (GITF). The CITF covers all citrus inspections and the GITF covers all vegetable inspections. Both funds operate on a commodity cost basis, meaning that each commodity inspected is charged fees to cover only the cost of inspecting that commodity plus a share of all administrative costs. The share of the administrative cost is based on the commodity's percentage of the total inspection hours within CITF and GITF. The new commodity will generate a new commodity cost code and therefore will share part of the administrative costs of the division along with salary and benefit dollars for when our current FTEs code their time to the new inspection program. Also, there will be additional training and travel expense.

While the change in the pesticide registration fee schedule yields no additional revenues, the department states that imposing late fees could result in a nonrecurring increase to the GITF totaling as much as \$223,312 during the 2008 debut registration cycle, and potentially half of that amount in 2009. The level of revenues would be expected to decline significantly in subsequent registration cycles since late fees would be collected only once every two years and since registrants who have experienced late fees would likely become more proactive in registering on time. There is also a one-time, nonrecurring cost of \$5,000 associated with modifying the pesticide registration database.

The department's current cost estimates indicate there will be additional revenues from tomato inspections. However, the department has stated it will implement these provisions with existing FTEs so there may likely be a net increase of revenue even after administrative overhead, new training and travel expenditures are accounted for.

Finally, there are nonrecurring expenditures of \$27,000 attributed to the Consumer Fireworks Task Force.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Environment and Natural Resources Council considered and passed HB 651 with a strike-all amendment. The bill was reported favorably with council substitute. The differences between the bill and the strike-all amendment are as follows:

- The amendment clarifies that the fee imposed for late registration of pesticide brands will be deposited into the General Inspection Trust Fund.
- The amendment corrects the spelling of "hooved" in the definitions for "dairy farm" and "milk" to mirror the federal definitions.
- The amendment provides for more stringent inspections on tomato farms and in tomato packinghouses. Fees collected related to these inspections will be deposited into the General Inspection Trust Fund to be used for tomato-related activities.

- The amendment instructs the department to conduct, or cause to be conducted, research projects recommended by the Florida Citrus Production Research Advisory Council. The amendment clarifies this is to be done with funds specifically appropriated for this purpose.
- The amendment renames the No. 2 packing house at the Palatka State Farmers' Market as the E.H. "Gene" Downs Building and instructs the Department of Agriculture and Consumer Services to erect suitable markers.
- The amendment modifies the membership of the Consumer Fireworks Task Force. The task force is increased from 7 to 8 members. The Speaker of the House of Representatives will appoint one person representing municipal government and one person representing the industry. The President of the Senate will appoint one person representing county government and one person representing the industry. The Commissioner of Agriculture will select one person from the Division of Forestry and one person representing industry. His third appointment has no designation. The Chief Financial Officer has one undesignated appointment. The amendment expands the scope of the task force study to include matters relating to the use of consumer fireworks, zoning classifications for placement of retail facilities and funding options for the clean up of expended fireworks products. The amendment also provides that no new permanent retail facilities will be constructed and no new local ordinances will be passed until the task force completes its work and the legislature has the opportunity to address the recommendations of the task force during the 2008 legislative session. This preemption allows for new retail facilities that have received site plan approval or started construction prior to March 8, 2007. It also provides that the number of permits issued after March 8, 2007 to temporary retail sales facilities shall not exceed the number of permits issued for such facilities for the previous calendar year.
- The amendment corrects several technical errors in the bill. The word "be" was omitted in regards to the submission of a report by the Consumer Fireworks Task Force. Language in the bill is removed that is currently in statute but was not being amended. The word "repackers," which was inadvertently left out in regards to fee collection is reinserted.