

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 7215      PCB ANRS 11-01      Department of Agriculture and Consumer Services  
**SPONSOR(S):** Economic Affairs Committee, Appropriations Committee, Agriculture & Natural Resources  
Subcommittee, Crisafulli  
**TIED BILLS:**                    **IDEN./SIM. BILLS:** CS/SB 2076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Kaiser	Blalock
1) Appropriations Committee	24 Y, 0 N, As CS	Lolley	Leznoff
2) Economic Affairs Committee	15 Y, 0 N, As CS	Whittington	Tinker

### SUMMARY ANALYSIS

CS/CS/HB 7215 addresses several issues related to the powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Deletes provisions allowing department advisory committee members to claim per diem and travel expenses.
- Exempts certain Direct Service Organization's within the department from annual audits.
- Increases current levels of insurance for pest control businesses.
- Provides for the establishment, monitoring, and regulation of centralized pest control customer contact centers in lieu of licensure as pest control businesses.
- Establishes a limited certification category authorizing persons to use nonchemical methods for controlling rodents in lieu of licensure.
- Requires registered pesticide brand products that undergo label revision during the biennial registration period to provide the department with a copy of the revised label.
- States that any fees associated with the pesticide brand registration program are non-refundable.
- Deletes the Division of Dairy Industry within the department and transfers the duties and responsibilities associated with that division to the Division of Food Safety. Repeals ch. 503, F.S., relating to frozen desserts and transfer statutory language regarding frozen desserts to ch. 502, F.S.
- Requires persons who produce, harvest, pack, or repack tomatoes that are not permitted under chapter 500, F.S., to register each location annually by August 1 on a form prescribed by the department.
- Establishes a Certified Pile Burner program in statute.
- Allows the lead managing agency, instead of the Department of Environmental Protection, to receive the proceeds from the initial grant of easements for the construction of electric transmission and distribution facilities on Board of Trustees-owned lands.
- Grants the department with the exclusive authority to enforce the Florida Building Code as it relates to wildfire and law enforcement facilities.
- Authorizes monies received from the sale of surplus state-owned wildland firefighting equipment and vehicles to be used to exchange, maintain or purchase wildland firefighting equipment.
- Authorizes the department to dispose of surplus firefighting equipment and vehicles when, and as, it sees fit.
- Authorizes the department to delegate authority to local governments to issue authorizations for open burning.
- Renames the Office of Water Coordination as the Office of Energy and Water.
- Provides fair associations with immunity from liability for damages resulting from certain exhibits and concessions at public fairs; provides exceptions to immunity.
- Adds the appointment of a (non-voting) youth member who is active in the Future Farmers of America or a 4-H Club to the Florida State Fair Authority.
- Provides criminal charges for the theft of bee colonies of registered beekeepers as a farm product.

The bill appears to have a significant positive fiscal impact on state government for Fiscal Year 2011-12 of about \$964,000, of which \$744,000 is nonrecurring. The \$744,000 is appropriated in the bill to the department from the Florida Forever Trust Fund. There is an insignificant fiscal impact on local governments. For a more detailed explanation of the fiscal impact, please see Section II, Fiscal Analysis & Economic Impact Statement, of this analysis.

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

STORAGE NAME: h7215c.EAC

DATE: 4/26/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Agricultural Purpose**

##### *Current situation*

Section 193.461(5), F.S., includes a definition of “agricultural purposes” which includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.

Section 823.14(3)(c), F.S., defines “farm product” as any plant, as defined in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom.

##### *Effect of Proposed Changes*

The bill amends the statutory definition of agricultural purposes, as used in s. 193.461(5), F.S., to incorporate the statutory definition of farm product into said definition.

#### **Advisory Committees**

##### *Current Situation*

The Commissioner of Agriculture has statutory authority<sup>1</sup> to appoint advisory committees to assist the department with its duties and responsibilities. There are advisory committees for Off-Highway Vehicle Recreation Use, Pest Control Enforcement, Pesticide Review, Motor Vehicle Repair, and the Agricultural Promotion Campaign, to name a few.

The law mandates the composition of the committees, their powers and duties, and the term of their service, among other things. The law also states that advisory committee members may not receive compensation for their services, but are entitled to reimbursement for per diem and travel expenses.<sup>2</sup> According to a 2007 response to a Joint Legislative Sunset Committee request, the department had approximately 50 advisory boards, councils, or committees that incurred travel, staff, and other expenses totaling approximately \$220,000.<sup>3</sup>

##### *Effect of Proposed Changes*

The bill repeals statutory provisions authorizing members of department advisory committees to receive per diem and travel expenses. The bill specifically removes statutory authorization for: Off-Highway Vehicle Recreation Advisory Committee, Pest Control Enforcement Advisory Council, Pesticide Review Council, Motor Vehicle Repair Advisory Council, State Agricultural Advisory Council, Animal Industry Technical Council, Arabian Horse Council, Dairy Industry Technical Council, Florida Consumers' Council, Florida Agricultural Promotional Campaign Advisory Council, Marketing Oder Advisory Council, Fertilizer Technical Council, Commercial Feed Technical Council, Honeybee Technical Council, Aquaculture Review Council, and Viticulture Advisory Council.

#### **Pest Control**

##### Insurance

##### *Current Situation*

The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. The department maintains these minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

##### *Effect of Proposed Changes*

The bill increases:

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<sup>1</sup> Section 570.0705, F.S.

<sup>2</sup> Section 112.061, F.S., establishes per diem and travel expenses for public officers, employees, and other authorized persons.

<sup>3</sup> FY 2006-07

- Bodily injury from \$100,000 to \$250,000 per person, \$300,000 to \$500,000 per occurrence;
- Property damage from \$50,000 to \$250,000 per occurrence, \$100,000 to \$500,000 in the aggregate; and,
- Combined single-limit coverage from \$400,000 to \$500,000 in the aggregate.

For wood-destroying organism inspection licenses, the limits are increased from \$50,000 to \$250,000 in the aggregate, \$25,000 to \$250,000 per occurrence, and financial responsibility from \$100,000 to \$500,000.

### Pest Control Customer Contact Centers

#### *Current Situation*

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. These companies maintain that pest control contact centers provide licensees with a more efficient means of providing service to customers.

Florida law currently requires pest control businesses to register and obtain an annual license<sup>4</sup> for each location. In addition to being licensed, a pest control business must have at least one certified operator in charge at each location to provide oversight and training for the identification card holders who perform the actual pesticide application.<sup>5</sup> Currently, a customer contact center may not solicit business or receive calls from customers located in Florida without the requisite pest control licenses.

#### *Effect of Proposed Changes*

The bill provides for the establishment, monitoring, and regulation of centralized pest control customer contact centers, allowing licensed centers to solicit pest control business and provide service to consumers for one or more business locations. A person may not operate a customer contact center for a pest control business that is not licensed by the department. The bill establishes a licensing fee<sup>6</sup> and biennial renewal fee.<sup>7</sup> The department is authorized to deny or refuse to renew a license if:

- The pest control business licensees for whom it solicits business are not owned in common by a person or business entity recognized by the state.
- The applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that have gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.
- A person who solicits pest control services or provides customer service in a licensed customer contact center performs pest control services such as: the use or application of a device or application to prevent or control any pest in, on, or under a structure, lawn, or ornamental; the identification of or inspection for infestation in, on, or under a structure, lawn, or ornamental; the use of pesticides, poisons, or devices for preventing or controlling insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental; or performing any phase of fumigation.

The bill provides that a license automatically expires if a licensee changes the business address of its customer contact center location. The department is given rule-making authority for implementing provisions related to the recordkeeping and monitoring of pest control customer contact centers. The bill also provides criteria for disciplinary action against a pest control customer contact center or a pest control business licensee of the contact center.

### Certification for Commercial Wildlife Management Personnel

#### *Current Situation*

<sup>4</sup> The license fee must be at least \$75 and not more than \$300.

<sup>5</sup> The certification fee for a certified operator is \$150 and the fee for and identification card holder is \$10.

<sup>6</sup> The license fee must be at least \$600 and not more than \$1,000.

<sup>7</sup> The renewal fee must be at least \$600 and not more than \$1,000.

For several years, the Florida Fish and Wildlife Conservation Commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years and the permitting was discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

Under current law, pest control is defined as the use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental.<sup>8</sup> Pest is defined as an arthropod, wood-destroying organism, rodent (defined in statute to include rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure), or other obnoxious or undesirable living plant or animal organism.<sup>9</sup> Persons practicing pest control are required to be licensed under chapter 482, F.S.

#### *Effect of Proposed Changes*

The bill creates a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods to control “rodents,” which also includes rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure. The bill does not require individuals who trap these animals by nonchemical means to obtain any license or certificate, but those who choose to obtain the certification are not required to be licensed as pest control businesses. The bill also provides that persons licensed under the pest control chapter and that practice accepted methods of pest control are immune from liability under the animal cruelty provisions.

Certification does not allow the use of pesticides or chemicals to control rodents; operation of a pest control business; or supervision of an uncertified person using non-chemical methods to control rodents. The bill specifies that the provisions within the pest control chapter do not exempt a person from the rules, orders, or regulations of the Florida Fish and Wildlife Conservation Commission.

Persons seeking limited certification must pass an examination given by the department. An examination fee of at least \$150, but not more than \$300, may be set by rule of the department. The department is required to provide appropriate reference materials for the examination and make the examination readily available to applicants at least quarterly or as necessary in each county. Prior to receiving limited certification, each applicant must furnish proof of insurance, stating that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage as required by statute.<sup>10</sup>

#### Fumigation Notice

##### *Current Situation*

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

##### *Effect of Proposed Changes*

The bill allows a licensee, when advance notice is not possible, to contact the department regarding the location where fumigation will be taking place by facsimile or another form of electronic communication, as well as by telephone.

#### **Pesticide Registration**

##### *Current Situation*

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<sup>8</sup> Section 482.021(22)(a), F.S.

<sup>9</sup> Section 482.021(21) & (24), F.S.

<sup>10</sup> Section 482.071(4), F.S.

Currently, each brand of pesticide distributed, sold, or offered for sale in the state must be registered biennially by the department.<sup>11</sup> The registrant must supply the department with such information as the name and address of the registrant, the pesticide brand name, an ingredient statement, and a copy of the labeling. Registrants are required to pay a fee per brand of pesticide and another fee for each special local-need label and experimental use permit. The department may also assess a supplemental fee to offset the costs of testing for food safety for pesticide brands that contain an active ingredient for which the U.S. Environmental Protection Agency (EPA) has established a food tolerance limit.<sup>12</sup> The department is authorized to assess late fees for registrations<sup>13</sup> that are not timely renewed. Fees collected through the pesticide registration program are deposited into the General Inspection Trust Fund and used to carry out the provisions of the registration program.

### *Effect of Proposed Changes*

The bill requires registered pesticide brand products that undergo label revision during the biennium to provide the department with a copy of the revised label, including a cover letter that details the changes. This must be done prior to the “newly labeled” pesticide brand being distributed or offered for sale. If the revised label warrants notification of or amendment review by the EPA, the registrant must submit an additional copy of the label with markings to identify those revisions.

The bill also provides that, by January 1, 2013, all fees related to pesticide registration must be submitted electronically using the department’s e-commerce/eGov web site. The bill states that any fees associated with the pesticide brand registration program are non-refundable.

## **Food Safety**

### *Current Situation*

The department currently has a Division of Food Safety and a Division of Dairy Industry. The Division of Food Safety is responsible for assuring that the public has a safe and wholesome food supply through the 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 of Dairy Industry is responsible for inspecting dairy farms in the state and enforcing provisions relating to milk and milk products to ensure dairy products are wholesome and produced under sanitary conditions. The Division of Dairy Industry is also responsible for inspecting milk plants, milk product plants, and plants that manufacture and distribute frozen desserts and frozen desserts mix, as well as analyzing and testing samples of milk, milk products, frozen desserts, and frozen desserts mix.

In 2010, the Legislature enacted legislation<sup>14</sup> creating s. 500.70, F.S., authorizing the department to adopt rules establishing food safety standards to safeguard the public health and promote the public welfare by protecting the consuming public from injury caused by the adulteration or the microbiological, chemical, or radiological contamination of tomatoes. The law also required the rules to apply to the producing, harvesting, packing, and repacking of tomatoes for sale for human consumption by a tomato farm, tomato greenhouse, or tomato packinghouse or repacker in this state. The law specifically authorized the rules to establish standards for:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.<sup>15</sup>
- Proximity of domestic animals and livestock to the production areas for tomatoes;

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<sup>11</sup> The registration requirement also applies to pesticide brands delivered for transportation or transported in intrastate commerce or between points within the state through any point out of the state.

<sup>12</sup> Per 40 C.F.R., part 180

<sup>13</sup> These include pesticide brands, special local need labels, and/or experimental use permits.

<sup>14</sup> Chapter 2010-25, L.O.F.

<sup>15</sup> Section 500.12, F.S., requires any person who operates a food establishment or retail food store to obtain a food permit from the department. The exceptions to the permit requirement include:

- Persons operating minor food outlets that sell prepackaged candy, chewing gum, soda, or popcorn provided in shelf space of less than 12 linear feet.
- Persons subject to continuous, onsite federal or state inspection.
- Persons selling only legumes, in the shell, either parched, roasted or boiled.
- Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state.

- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and,
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The department has statutory authority to establish standards for registration and to set registration costs for the tomato food safety program, but does not have statutory authority to require registration or payment of said registration costs.

#### *Effect of Proposed Changes*

The bill repeals ch. 503, F.S., relating to frozen desserts, and transfers the statutory language regarding frozen desserts to ch. 502, F.S., relating to milk and milk products. The bill titles ch. 502, F.S., to read "Milk, Milk Products, and Frozen Desserts." This includes requirements for permits, fees, reporting, and recordkeeping. The bill adds administrative penalties to s. 502.231, F.S., for frozen dessert licensees.

The bill abolishes the Division of Dairy Industry within the department and transfers the duties and responsibilities associated with that division to the Division of Food Safety. The Division of Food Safety will assume responsibility for inspecting dairy farms in the state and enforcing provisions relating to milk and milk products to ensure dairy products are wholesome and produced under sanitary conditions. The Division of Food Safety will also assume responsibility for inspecting milk plants, milk product plants, and plants that manufacture and distribute frozen desserts and frozen desserts mix, as well as analyzing and testing samples of milk, milk products, frozen desserts, and frozen desserts mix. The bill preempts local regulations of frozen desserts for wholesale to the state.

The bill creates subsection (6) in s. 500.70, F.S., to require that any person who produces, harvests, packs, or repacks tomatoes that are not permitted according to s. 500.12, F.S., must also register each location annually by August 1 on a form prescribed by the department. If the bill passes, individuals who produce, harvest, pack, or repack tomatoes must register, along with the location where such activities are occurring. One registration may be submitted for all locations, but the physical address of each location must be provided. The bill authorizes the department to set by rule an annual registration fee not to exceed \$500. Monies collected from the registration fee must be deposited into the General Inspection Trust Fund.

### **Division of Forestry**

#### Certified Pile Burner Program

##### *Current Situation*

Under current law, certain requirements must be met for a person to burn wild land or vegetative land-clearing debris. Current law also regulates prescribed burning, which can be performed only when a certified prescribed burn manager is present. The certified burn manager must be on site from ignition of the burn to its completion and have in his/her possession a copy of the prescription. The Division of Forestry (division) currently has a voluntary Certified Pile Burner program in place; however, this program is not specifically authorized in statute.

Currently, the division sets pile burning restrictions by rule, but nothing in the statutes allows enforcement of these rules. Therefore, there is no punishment for someone who chooses not to comply.

#### *Effect of Proposed Changes*

The bill codifies the Certified Pile Burner program in statute. It provides definitions for “certified pile burner,” “pile burning,” “land-clearing operation” and “yard trash,” as well as revises the definition of “extinguished.” The bill requires the certified pile burner to ensure that:

- Prior to ignition, the piles are properly placed and the content is conducive to efficient burning.
- The piles are properly extinguished no later than 1 hour after sunset. In certain areas, the piles must be properly extinguished at least 1 hour before sunset.
- The specific consent of the landowner or his agent must be obtained before requesting authorization to burn.
- An authorization to burn has been obtained from the division prior to ignition.
- There are adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

If a burn is conducted in accordance with the provisions of the program, the property owner and his/her agent are not liable under applicable Florida law<sup>16</sup> for damage or injury caused by the fire or resulting smoke unless gross negligence is proven. Violations of program provisions are a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days or a \$500 fine. The division is given rule-making authority to implement the certified pile burning program.

The bill authorizes the division to send notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

The bill subjects violations of division rules to administrative fines, not to exceed \$1,000 per violation and creates a new criminal penalty<sup>17</sup> for persons who fail to comply with any rule or order adopted by the division or who knowingly make any false statement or representation in any application, record, plan, or other document required by chapter 597, F.S., or any rules adopted under chapter 597, F.S.

#### Delegation of Authority for Local Burning

##### *Current Situation*

Current law provides for the delegation of authority to the division, by the Department of Environmental Protection, to control and prohibit air and water pollution in any way possible. However, the division does not have the statutory authority to delegate to local governments the authority to implement a burn authorization program, although many local governments have expressed an interest, and ability, to implement such a program with division guidance. Currently, some counties issue permits under their own authority, but because the division has the final authority regarding open burning, the division is required to come behind and re-issue daily authorizations. By delegating the authorization, only one permit will be required as opposed to one from the county and one from the division.

##### *Effect of Proposed Changes*

The bill authorizes the division to delegate authority to local governments to issue authorizations for open burning. The local government’s program must be approved by the division, provide ordinances or local laws that comply with state law, provide enforcement of the program’s requirements, and provide financial, personnel, and other resources needed to carry out the program. If the division determines that a local government’s program does not comply with state law or corresponding rules, the division can require the local government to take corrective action within a reasonable timeframe. If the local government fails to comply within the allotted time, the division may resume administration of the open burning authorization program from the local government. Local governments administering an open burning authorization program are responsible for cooperating and assisting the division in carrying out the division’s powers, duties, and functions. Violations of a local government’s open burning authorization program are subject to penalties as provided in s. 590.14, F.S.<sup>18</sup>

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<sup>16</sup> Sections 590.13 and 590.125(2), F.S.

<sup>17</sup> Violations of program provisions are a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine of \$500.

<sup>18</sup> Ibid

The division retains final authority regarding the issuance of authorizations for broadcast burning, as well as agricultural and silvicultural burning. The bill preempts to the division exclusive authority in these areas.

#### Proceeds from Easements

Currently, the Department of Environmental Protection (DEP) receives the proceeds from the sale of easements for the construction and operation of electric transmission and distribution facilities on Board of Trustees (BOT)-owned lands managed by the department. The funds are retained by the DEP to administer the Florida Forever program. The bill allows the lead managing agency to receive the initial grant of such easements over BOT-owned lands. The managing agency will determine the use of funds with priority given to inholdings and additions to public lands and lands on a Florida Forever land acquisition list.

#### Division Selected Exempt

Currently, neither the aviation manager nor the division training coordinator have Selected Exempt Status in the state personnel designation. The bill provides both the aviation manager and the division training coordinator with Selected Exempt status.

#### Enforcement of the Florida Building Code

The Florida Building Code has been revised several times in recent years and, according to the department, this has created confusion among local governments regarding code interpretation and led to a cumbersome and costly process for the department as they construct facilities for wildfire equipment in different parts of the state. The bill grants the department with the exclusive authority to enforce the Florida Building Code as it relates to wildfire and law enforcement facilities.

#### Surplus Division Property

Prior to 2006, when the law<sup>19</sup> was changed, the department had the authority to use monies acquired from the disposition of surplus firefighting equipment to reinvest in other firefighting equipment. Since 2006, the department must seek a special appropriation before the funds can be reinvested in other equipment. Also, current law<sup>20</sup> requires that all replaced equipment be reported for disposal within 45 days of being replaced. Current law<sup>21</sup> also requires Department of Management Services to approve the disposal of any motor vehicles or aircraft. Because of the nature of emergency response, the department's equipment needs vary from year to year. Because funding for replacement equipment is inadequate, the department has requested the flexibility to retain replaced equipment to meet future emergency needs and for use as backup for the frontline equipment. The bill allows the department to retain the monies acquired from the sale of state-owned firefighting equipment and vehicles. The monies received may be used for the acquisition of exchange and surplus equipment, and for necessary operating costs related to the equipment. The bill requires the department to maintain records of the accounts into which the money is deposited. The department is also given the authority to dispose of surplus firefighting equipment and vehicles when, and as, it sees fit.

#### **Other Department Issues**

##### Department Authority to Enforce Laws Relating to Commercial Feed Stock and Fertilizers

Currently, s. 570.07, F.S., sets out the powers and duties of the department. These include regulatory and enforcement powers. Currently, s. 570.07(16)(c), F.S., provides the department with the authority to enforce state laws and rules relating to registration, labeling, inspection, and analysis of commercial stock feeds and commercial fertilizers. The bill amends subsection (16)(c), that adds language to authorize the department, in addition to its current authority, to enforce laws relating to the sale, composition, formulation and distribution of commercial feed stocks and commercial fertilizers. However, the subsection provides a limited exception to counties that have existing fertilizers ordinances.

#### Direct/Citizen Support Organizations

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<sup>19</sup> Chapter 2006-122, s. 40, L.O.F.

<sup>20</sup> Section 287.16, F.S.

<sup>21</sup> Section 273.055, F.S.



A direct/citizen support organization (DSO) is a separate, not-for-profit corporation organized and operated exclusively to assist a specific organization by providing supplemental resources from grants, gifts and bequests of money and/or services. These organizations are authorized by Florida Statute to receive, hold, invest and administer property, and to make expenditures to or for the benefit of the specific organization. State law<sup>22</sup> requires DSOs to obtain an annual financial audit conducted by an independent certified public accountant if the annual expenditures are more than \$100,000. Current law provides an exemption from the auditing requirement for DSOs under the purview of the DEP that are not for profit and have annual expenditures of less than \$300,000.

The bill exempts the department's DSOs that are not for profit and have annual expenditures of less than \$300,000 from obtaining annual audits.

### Energy

The Office of Water Coordination (OWC), within the department, was established in 1995 by the Legislature to facilitate communications among federal, state, local agencies, and the agricultural industry on water quantity and water quality issues involving agriculture. The OWC is actively involved in the development of best management practices (BMPs), addressing both water quality and water conservation on a site specific, regional, and watershed basis. The office is also directly involved with statewide programs to implement the Federal Clean Water Act's Total Maximum Daily Load (TMDL) requirements for agriculture. The OWC works cooperatively with agricultural producers and industry groups, the DEP, the university system, the water management districts, and other interested parties to develop and implement BMP programs that are economically and technically feasible.

The bill renames the Office of Water Coordination to the Office of Energy and Water.

Florida's "Farm to Fuel" initiative seeks 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. In the process, it is designed to give Florida agricultural producers alternative crops to grow to keep their farms and ranches viable. Current statute requires the department to coordinate with and solicit the expertise of the state energy office within DEP when developing and implementing this initiative.

Because the state energy office is no longer in the DEP, this requirement is no longer necessary in statute, and is removed by this bill.

### Florida State Fair Authority

The Florida State Fair Authority (authority) is an instrument of the state, under the supervision of the Commissioner of Agriculture. The authority, composed of 21 members, is responsible for staging an annual fair to serve the entire state. The Commissioner, or his/her designee, serves as a voting member. There is also a member who serves as a member of the Board of County Commissioners of Hillsborough County, the district where the state fairgrounds are located. The Commissioner appoints the remaining members of the authority. Each member serves a 4-year term and may be appointed for more than one term.

The bill provides an authority or fair association with immunity from liability for damages resulting from certain exhibits and concessions at public fairs. The bill also provides exceptions to the immunity granted to an authority or fair association. The bill provides that the immunity will not apply if the damages result from an act or omission that was committed by the authority or fair association in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The bill further provides the immunity does not apply to third parties providing exhibits or concessions.

The bill provides for the membership of the authority to be increased to 22 members, with the appointment of a non-voting youth member who is active in the Florida Future Farmers of America or a 4-H Club. The youth member's term is for one year.

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<sup>22</sup> Section 215.981(1), F.S.

## Apiary

Florida law currently provides criminal charges<sup>23</sup> for the theft of any commercially farmed animal, such as horses, cows, sheep, swine, or other grazing animals, including aquaculture. The bill amends current law to include the theft of bee colonies of registered beekeepers.

Current law defines “farm theft” as the unlawful taking possession of any items that are grown or produced on land, owned, rented, or leased by another person. The definition of “farm theft” is amended to include the equipment and associated materials used to grow or produce the farm products as defined in the Florida Right to Farm Act.<sup>24</sup> The definition of “farmer” is also amended to include those persons who produce honey.

### B. SECTION DIRECTORY:

**Section 1:** Amending s. 20.14, F.S.; removing a reference to the Dairy Industry.

**Section 2:** Amending s. 193.461, F.S.; inserting a cross-reference.

**Section 3:** Amending s. 215.981, F.S.; exempting certain direct-support and citizen support organizations for the Department of Agriculture and Consumer Services from obtaining an independent audit.

**Section 4:** Amending s. 253.02, F.S.; providing for the grantee of easements for electrical transmission to pay the lead manager of the state owned lands or, when there is no lead manager, the Department of Environmental Protection if suitable replacement uplands cannot be identified.

**Section 5:** Amending s. 261.04, F.S.; removing a provision relating to per diem and travel expenses.

**Section 6:** Amending s. 381.0014, F.S.; removing a cross-reference.

**Section 7:** Amending s. 482.051, F.S.; providing rule changes that allow operators to provide certain emergency notice to the department by facsimile or other electronic means.

**Section 8:** Amending s. 482.071, F.S.; increasing the minimum bodily injury and property damage insurance coverage required for pest control businesses.

**Section 9:** Creating s. 482.072, F.S.; providing for licensure by the department of pest control customer contact centers; providing application requirements; and, providing for fees, licensure renewal, penalties, licensure expiration and transfer of licenses.

**Section 10:** Creating s. 482.157, F.S.; providing for the certification of commercial wildlife trappers; providing certification requirements, examination requirements, and fees; limiting the scope of work permitted by certificate holders; specifying that certificate holders must abide by certain rules; and, specifying that licensees who practice accepted pest control methods are immune from liability for violating laws prohibiting cruelty to animals.

**Section 11:** Amending 482.183, F.S.; providing immunity for licensed or certified persons practicing accepted pest control methods; providing rules, regulations, or orders of the Fish and Wildlife Conservation Commission apply to persons under this chapter.

**Section 12:** Amending s. 482.226, F.S.; increasing the minimum financial responsibility requirements for licensees that perform certain inspections.

**Section 13:** Amending s. 482.243, F.S.; removing a provision relating to per diem and travel expenses.

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<sup>23</sup> Grand theft of the third degree and a felony of the third degree, punishable by imprisonment not exceeding 5 years, \$5,000 fine or, for habitual offenders, for a term of imprisonment not exceeding 10 years.

<sup>24</sup> Section 823.14(3)(c), F.S.

**Section 14:** Amending s. 487.041, F.S.; providing that fees relating to pesticide brands are non-refundable; providing requirements for label revisions of pesticide brands; providing requirements for label revisions that must be reviewed by the U.S. Environmental Protection Agency; and, providing for payments of pesticide registration fees to be submitted electronically by a date certain.

**Section 15:** Amending s. 487.0615, F.S.; removing a provision relating to per diem and travel expenses.

**Section 16:** Amending s. 500.70, F.S.; requiring certain persons that produce, harvest, pack, or repack tomatoes to register each location by a date certain; providing for a fee to be set by department rule for registration; and providing for funds collected to be deposited into the General Inspection Trust Fund.

**Section 17:** Amending title of Chapter 502, F.S.; providing the title to read "MILK, MILK PRODUCTS, AND FROZEN DESSERTS."

**Section 18:** Amending s. 502.012, F.S.; defining terms related to the department's regulation of frozen desserts.

**Section 19:** Amending s. 502.013, F.S., revising legislative purpose and intent to conform.

**Section 20:** Amending s. 502.014, F.S., revising the department's powers and duties; authorizing the department to administer and enforce regulations of frozen desserts and frozen dessert mixes; revising the federal publication upon which certain milk sanitation ratings are based; authorizing the department to adopt rules.

**Section 21:** Repealing s. 502.032, F.S.; relating to milkfat tester's permits and permit fees.

**Section 22:** Amending s. 502.053, F.S.; providing permitting and licensing requirements and imposing permit and license fees for frozen dessert plants and milkfat testers; providing certain reporting requirements for frozen dessert plant permit holders; providing certain recordkeeping requirements for licensed milkfat testers; providing an exemption.

**Section 23:** Amending s. 502.054, F.S.; providing for the inspection of frozen desserts and frozen dessert plants.

**Section 24:** Amending s. 502.091, F.S., authorizing certain sales of ice cream and frozen desserts.

**Section 25:** Amending s. 502.121, F.S., restricting the construction or extensive alteration of frozen dessert plants.

**Section 26:** Amending s. 502.181, F.S., prohibiting certain acts related to the regulation of frozen desserts; providing penalties.

**Section 27:** Amending s. 502.231, F.S., prohibiting certain acts related to the regulation of frozen desserts.

**Section 28:** Amending s. 502.232, F.S., preempting to the state the local regulation of frozen desserts at whole.

**Section 29:** Repealing ch. 503, F.S., relating to the state's regulation of frozen desserts, enforcement and penalties for violations of such regulations, licensure of frozen dessert plants, and preemption of municipal and county regulations of frozen desserts.

**Section 30:** Amending s. 527.22, F.S.; removing a provision relating to per diem and travel expenses.

**Section 31:** Amending s. 559.9221, F.S.; removing a provision relating to per diem and travel expenses.

**Section 32:** Amending s. 570.07, F.S.; revising the department's authority to enforce laws relating to commercial stock feeds and commercial fertilizer; exempting certain counties from the department's enforcement of regulations of commercial stock feeds and commercial fertilizers; revising the powers and duties of the department relating to pollution control and the prevention of wildfires.

**Section 33:** Amending s. 570.0705, F.S.; removing a provision relating to per diem and travel expenses.

**Section 34:** Amending s. 570.074, F.S.; renaming the Office of Water Coordination to the Office of Energy and Water.

**Section 35:** Amending s. 570.18, F.S.; amending the number of divisions within the department.

**Section 36:** Amending s. 570.23, F.S.; removing a provision relating to per diem and travel expenses.

**Section 37:** Amending s. 570.29, F.S.; deleting a reference to the Dairy Industry.

**Section 38:** Amending s. 570.38, F.S.; removing a provision relating to per diem and travel expenses.

**Section 39:** Amending s. 570.382, F.S.; removing a provision relating to per diem and travel expenses.

**Section 40:** Repealing ss. 570.40 and 570.41, F.S.; relating to the powers and duties of the Division of Dairy Industry and the director of the Division of Dairy Industry.

**Section 41:** Amending s. 570.42, F.S.; removing a provision relating to per diem and travel expenses.

**Section 42:** Amending s. 570.50, F.S.; requiring the Division of Food Safety within the department to inspect certain dairy farms and plants, perform certain analyses and tests, and enforce certain rules and provisions of law; conforming provisions.

**Section 43:** Amending s. 570.51, F.S.; to conform.

**Section 44:** Amending s. 570.543, F.S.; removing a provision relating to per diem and travel expenses.

**Section 45:** Amending s. 570.954, F.S.; removing the requirement that the department coordinate with and solicit the expertise of the state energy office when developing the farm-to-fuel initiative.

**Section 46:** Amending s. 571.28, F.S.; removing a provision relating to per diem and travel expenses.

**Section 47:** Amending s. 573.112, F.S.; removing a provision relating to per diem and travel expenses.

**Section 48:** Amending s. 576.091, F.S.; removing a provision relating to per diem and travel expenses.

**Section 49:** Amending s. 580.151, F.S.; removing a provision relating to per diem and travel expenses.

**Section 50:** Amending s. 581.186, F.S.; removing a provision relating to per diem and travel expenses.

**Section 51:** Amending s. 586.161, F.S.; removing a provision relating to per diem and travel expenses.

**Section 52:** Amending s. 590.015, F.S.; amending the definition for "fire management services," and providing a definition for "open burning" and "broadcast burning."

**Section 53:** Amending s. 590.02, F.S.; relating to the Division of Forestry's powers, authority and duties.

**Section 54:** Amending s. 590.125, F.S.; relating to open burning authorizations by the Division of Forestry.

**Section 55:** Amending s. 590.14, F.S.; authorizing fines for violations of any of the division's rules; providing penalties for certain violations; and, providing legislative intent.

**Section 56:** Amending s. 597.005, F.S.; removing a provision relating to per diem and travel expenses.

**Section 57:** Amending s. 599.002, F.S.; removing a provision relating to per diem and travel expenses.

**Section 58:** Amending s. 616.17, F.S.; providing certain authorities or fair associations with immunity from liability for damages resulting from exhibits and concessions at public fairs; providing exceptions.

**Section 59:** Amending s. 616.252, F.S.; providing for a youth member to serve on the Florida State Fair Authority as a non-voting member; providing a term of one year for a youth member of the Authority; excluding youth members from compensation for special or full-time service performed on behalf of the Authority.

**Section 60:** Amending s. 812.014, F.S.; providing penalties for the theft of bee colonies of registered beekeepers.

**Section 61:** Amending s. 812.015, F.S.; amending definitions for "farmer" and "farm theft."

**Section 62:** Providing an appropriation.

**Section 63:** Providing an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	FY 11-12	FY 12-13	FY 13-14
<u>Pest Control Registration</u>			
Customer Contact Center License*	\$ 6,000	-	\$ 6,000
Limited Certification Wildlife Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	-	7,500	7,500
	<u>\$21,000</u>	<u>\$15,000</u>	<u>\$21,000</u>
General Inspection Trust Fund Total	\$21,000	\$17,500	\$24,000
Service Charge to General Revenue 4%	<u>(\$ 840)</u>	<u>(\$ 700)</u>	<u>(\$ 960)</u>
Net Revenue to General Inspection Trust Fund	\$20,160	\$16,800	\$23,040

\*Based on 10 licenses issued per year at \$600 each, renewing biennially.

\*\*Based on 100 exams the first year, 50 the second and third years, at \$150 each.

\*\*\*Based on 100 renewals at \$75 each.

### 2. Expenditures:

<u>Pest Control Registration</u>			
Inspections*	\$15,860	\$15,860	\$15,860
License Issuance**	<u>1,097</u>	<u>499</u>	<u>1,595</u>
	<u>\$16,957</u>	<u>\$16,359</u>	<u>\$17,455</u>

Total Expenditures	\$16,957	\$16,509	\$17,630
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\*FY 09-10 unit cost per inspection, 20 inspections at \$793.

\*\*FY 09-10 unit cost per license, 110 inspections at \$9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

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

##### 1. Revenues:

See Fiscal Comments Section

##### 2. Expenditures:

See Fiscal Comments Section

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

Persons serving on certain advisory committees for the department will be responsible for covering any travel expenses they incur while performing the duties associated with said service.

Pest control businesses that choose to obtain the pest control customer contact center license and individuals choosing to obtain a limited certification for commercial wildlife management personnel will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

Companies registering pesticides are required to submit their registration fees by means of the electronic commerce site. Some companies may have to adjust the process by which they register to accommodate this change; however, the reduction in postage and paperwork should reduce the overall cost.

While some tomato farms are in compliance, there are a few that may be affected by the requirement to register locations with the department, as well as pay an annual registration fee.

The bill provides civil liability protection to certified pile burners. Persons wishing to obtain an authorization for open burning will no longer be required to obtain two permits. Persons who fail to comply with rules adopted by the department relating to the division may be charged with civil/criminal charges.

The bill provides an authority or fair association with criminal and civil immunity for damages resulting from certain exhibits and concessions at public fairs. This could result in a savings to authorities and fair associations.

#### D. FISCAL COMMENTS:

According to a 2007 response to a Joint Legislative Sunset Committee request, the department had approximately 50 advisory boards, councils, or committees that incurred travel, staff, and other expenses totaling approximately \$220,000.<sup>25</sup>

A provision in the bill providing for civil/criminal charges for persons who fail to comply with rules adopted by the department may result in a local government needing to expend funds.

The bill allows the lead managing agency to receive the initial grant of easements. According to the DEP, the compensation for electric transmission easements is not an annual amount. It only occurs when an electric line easement occurs. The easement fee will continue to go into the Internal

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<sup>25</sup> FY 2006-07

Improvement Trust Fund. The additional compensation will go to the managing agency. The amount deposited to date for the Division of Forestry is \$744,000. The bill appropriates these nonrecurring funds to the department from the Florida Forever Trust Fund for Fiscal Year 2011-2012 in the Fixed Capital Outlay - Agency Managed – Land Management appropriation category pursuant to s. 259.105(3)(f), F.S.

Other provisions in the bill having an indeterminate fiscal impact include:

- Provisions that require tomato growers to register with the Department of Agriculture and Consumer Services and pay a registration fee of \$500. The estimated number of tomato farms ranges from 75 farms to 120 farms and varies from year to year. Revenue received will be subject to the 4 percent Service Charge to General Revenue.
- Provisions allowing the department to retain monies acquired from the sale of state-owned firefighting equipment and vehicles and to dispose of surplus firefighting equipment and vehicles when, and as, it sees fit.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a 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 regarding:

- Requirements and procedures for pest control customer contact centers.
- Fees for recertification of limited certification for commercial wildlife management personnel.
- Implementing and enforcing provisions relating to frozen desserts and frozen dessert mixes.
- Fees for the tomato food safety registration program.
- Regulating certified pile burning.

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

The bill “requires persons who produce, harvest, pack, or repack tomatoes that are not permitted according to s. 500.12, F.S., to register each location annually by August 1 on a form prescribed by the department.” However, the term “location” is not defined, thus making it unclear what must be registered.

### **IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Agriculture and Natural Resources Subcommittee adopted one amendment to PCB ANRS 11-01. The amendment specifies that a person holding a limited certificate for commercial trapping of wildlife using nonchemical methods is not exempt from the rules, regulations, or orders of the Fish and Wildlife Conservation Commission.

On April 15, 2011, the Appropriations Committee adopted one amendment to HB 7215. The amendment appropriates \$744,000 in nonrecurring funds to the Department of Agriculture and Consumer Services from the Florida Forever Trust Fund for land management activities.

On April 21, 2011, the Economic Affairs Committee adopted a strike-all amendment to CS/HB 7215 and reported the bill favorably as CS. Specifically, the strike-all:

- Removed s. 14.24, F.S., deleting travel reimbursement for the Florida Commission on the Status of Women.
- Removed s. 472.007, F.S., deleting travel reimbursement for Professional Surveyors and Mappers.
- Added s. 570.07(16), F.S., authorizing the department to enforce laws relating to the sale, composition, formulation and distribution of commercial feed stocks and commercial fertilizers; provides a limited exemption to counties that have existing fertilizer ordinances.
- Removed the aviation manager and the division's training coordinator from the list of forestry personnel who qualify for Selected Exempt Service status.
- Amended s. 193.461(5), F.S., to specify that the definition of "agricultural purposes" includes all forms of farm products as defined in s. 823.14 (3)(c), F.S.
- Added s. 616.17(4), F.S., providing fair associations with immunity from liability for damages resulting from certain exhibits and concessions at public fairs.
- Amended language relating to limited certification for commercial wildlife management personnel to mirror changes made to HB 949.
- Repealed ch. 503, F.S., relating to frozen desserts, and transfers statutory language regarding frozen desserts to ch. 502, F.S.

This analysis is drafted to the bill as amended.