

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1237 Department of Citrus
SPONSOR(S): State Affairs Committee, Rulemaking and Regulation Subcommittee, Albritton
TIED BILLS: HB 1239 **IDEN./SIM. BILLS:** SB 1648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee	13 Y, 0 N, As CS	Miller	Rubottom
3) State Affairs Committee	16 Y, 0 N, As CS	Kaiser	Hamby

SUMMARY ANALYSIS

Citrus has played a large role in Florida's history, and is an important part of the state's economy. Not only is citrus a symbol of Florida, it provides an economic impact of nearly \$9 billion to the state annually. In 1949, the Florida Citrus Code was established in Chapter 601, F.S., to regulate and protect the citrus industry. Over the years various sections of chapter 601, F.S., have been revised and new sections have been added resulting in inconsistencies throughout the chapter. In addition to correcting these inconsistencies, the bill:

- Revises the qualifications and terms of members of the Florida Citrus Commission (commission) and provides for staggered 3-year terms.
- Shortens the terms of current members to create staggered terms.
- Requires the commission to review the citrus districts every 5 years and, upon certain findings, make recommendations to the Legislature for redistricting of the districts.
- Requires the Department of Citrus (department) to be staffed 5 days per week, 40 hours per week.
- Clarifies and readopts the department's authority to adopt rules to implement certain powers and duties. (see "Rule-Making Authority" under the "Comments" section for specifics)
- Authorizes the department to conduct, or arrange to be conducted, research related to disease and crop efficiency that advances the purposes of the Florida citrus industry and commercialization related to advancing such research.
- Substitutes the term "assessment" for "excise tax" and sets the maximum assessments for grapefruit, oranges, tangerines, and citrus hybrids entering the primary channel of trade in the fresh and/or processed form.
- Provides that persons liable for the periodic payments of assessments must submit a letter of credit from an issuing financial institution located in the United States to guarantee payment.
- Changes the majority of voting members of the commission from nine to seven.
- Specifies dimensions for standard shipping and field boxes for fresh fruit and revises circumstances relating to use of such boxes.
- Requires the approval of a majority of the commission for any salary adjustment of a department employee who earns \$100,000 or more.
- Repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 901.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 601.9913, 601.9914, and 601.9916, F.S., effective January 1, 2013.¹

The bill does not appear to have a fiscal impact on state or local governments. Except as otherwise provided in Section 77, the bill takes effect July 1, 2012.

¹ For an explanation of the sections being repealed, please refer to the "Present Situation" of Section 77 in this analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citrus plays an important role in Florida's economy. It provides an economic impact of nearly \$9 billion to the state annually. In addition, the citrus industry employs more than 76,000 Floridians and generates close to \$1 billion in tax revenues². In 1949, the Florida Citrus Code was established in Chapter 601, F.S., to regulate and protect the citrus industry. Over the years various sections of chapter 601, F.S., have been revised and new sections have been added resulting in inconsistencies throughout the chapter. The bill rewrites chapter 601, F.S., to correct the inconsistencies, remove obsolete and out-dated language, and make other substantive changes.

Section 1

Present Situation

Section 20.29, F.S., provides the State Citrus Commission, created in chapter 601, F.S., is continued and renamed as the Department of Citrus (department). The head of the department is the board, also known as the Florida Citrus Commission (commission). All of the powers, duties, and functions of the commission are continued in the board, as head of the department. The board derives all of its powers, duties, and function from chapter 601, F.S. All of the personnel, records, property, and unexpended balances of appropriations and other funds are continued with the department as presently held.

Effect of Proposed Changes

The bill amends s. 20.29, F.S., to provide that the executive director of the department be appointed by a majority vote of, and serves at the pleasure of, the commission. The commission fixes the executive director's compensation and, in addition to any powers and duties assigned to the executive director by law, assigns the executive director's powers and duties.

Section 2

The bill amends s. 570.55, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 3

The bill amends s. 600.041, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 4

Present Situation

Section 601.01, F.S., states the short title for chapter 601, F.S., is "The Florida Citrus Code of 1949."

Effect of Proposed Change

The bill amends s. 601.01, F.S., changing the short title to the "Florida Citrus Code."

Section 5

Present Situation

Currently, s. 601.03, F.S., defining terms used in chapter 603, F.S., does not define "department." There is inconsistent use throughout the chapter of "department" and "Department of Citrus."

² http://www.floridajuice.com/history_of_citrus.php (Last viewed on 1/13/12)

Effect of Proposed Changes

The bill amends s. 601.03, F.S., to provide a definition for "department," which means the "Department of Citrus." The definitions of "canned products," "citrus fruit," and "commission" are also amended to reflect the new definition of "department." The definition for "primary channel of trade" is also amended to include the routes through which citrus fruit is marketed. Various other definitions are amended but the changes are non-substantive, technical revisions that do not change the statutory meaning.

Section 6

Present Situation

Section 601.04, F.S., creates the Florida Citrus Commission (commission) and establishes its membership. The commission is composed of nine practical citrus fruit persons who are residents of the state and each of whom is and has been actively engaged in growing, growing and shipping, or growing and processing of citrus fruit in the state for at least 5 years immediately prior to appointment to the commission. Additionally, during the 5 years immediately prior to appointment, each member must have derived a major portion of his/her income from activities listed above or been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

Current law provides for six members of the commission to be designated as grower members, who are primarily engaged in the growing of citrus fruit as an individual owner; as the owner of, or as stockholder of, a corporation; or as a member of a firm of partnership primarily engaged in citrus growing. Grower members cannot receive compensation from any licensed fruit dealer or handler as defined in chapter 601, F.S., other than gift fruit shippers. However, a grower member cannot be disqualified as a member of the commission if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and, markets its own fruit and whose business is not primarily purchasing and handling the fruit grown by others.

Three of the members of the commission are designated as grower-handler members, who are engaged as owners, or as paid officers or employees, of a corporation, firm, partnership, or other business unit engaged in the handling of citrus fruit. One of the three grower-handler members must be primarily engaged in the fresh fruit business, with the other two grower-handler members primarily engaged in the processing of citrus fruits.

Members must meet the qualifications and classification described above throughout the respective term of their office. If a member fails to meet the qualifications or classification possessed at the time of appointment, such member must resign or be removed and will be replaced with a member possessing the proper qualifications and classification.

The commission is composed of three members from each of the three citrus districts. Each of the members must reside in the district from which he/she was appointed. For purposes of s. 601.04, F.S., the residence refers to the actual physical and permanent residence of the member.

Members of the commission are appointed by the governor for three year terms. Appointments are made by February 1 preceding the commencement of the term and must be confirmed by the Senate in the following legislative session. Four members are appointed each year. Members serve until their respective successors are appointed and qualified. The regular terms begin on June 1 and ends on May 31 of the third year after appointment. Effective July 1, 2011, the terms of all members of the commission appointed on or before May 1, 2011, were terminated and the Governor appointed members in accordance with the provisions of chapter 601, F.S.

When appointments are made, the Governor publicly announces the actual classification and district that each appointee represents. A majority of the members of the commission constitutes a quorum for

the transaction of business and carrying out the duties of the commission. Prior to beginning their duties as members of the commission, each member must take and subscribe to the oath of office as prescribed in s. 5, Art. II of the State Constitution.

The commission must elect a chair and vice chair and such other officers as it deems necessary. The chair, with the concurrence of the commission, may appoint such advisory committees or councils composed of industry representatives as he/she deems appropriate. In appointing such committees or councils, the chair must set forth areas of committee or council concern that are consistent with the statutory powers and duties of the commission and the department.

Current law provides legislative intent for the commission be redistricted every five years. Redistricting is based on the total boxes produced from each of the three districts during that five-year period.

Effect of Proposed Changes

The bill amends s. 601.04, F.S., to provide that three commission members must be appointed from each of the three citrus districts. Members appointed from the same citrus district serve staggered terms so that the term of one of the district's three members expires each year. In order to create the staggered terms, the terms of members appointed before July 1, 2012, are shortened as follows:

- The term of one member from each citrus district expires June 30, 2012, and her or his successor will be appointed to a term beginning July 1, 2012, and expiring May 31, 2015.
- The term of one member from each citrus district expires June 30, 2013, and her or his successor will be appointed to a term beginning July 1, 2013, and expiring May 31, 2016.
- The term of one member from each citrus district expires June 30, 2014, and her or his successor will be appointed to a term beginning July 1, 2014, and expiring May 31, 2017.
- Subsequent appointments are made in accordance with this section.

The bill requires the Governor to announce the term, as well as the district and classification, when making appointments to the commission. The commission must elect a chair and a secretary and may elect a vice chair and such other officers as the commission deems advisable.

The bill also makes non-substantive, technical revisions that do not change the statutory meaning.

Sections 7, 8, 9, 10 and 11

The changes made by the bill to sections 601.045, 601.05, 601.06, 601.07, and 601.08, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 12

Present Situation

Section 601.09, F.S., establishes three separate citrus districts composed of:

- Citrus District One: Levy, Alachua, Brevard, Putnam, St. Johns, St. Lucie, Flagler, Indian River, Marion, Seminole, Orange, Okeechobee, Polk, Volusia, and Osceola Counties.
- Citrus District Two: Hardee, Desoto, Highlands, and Glades Counties.
- Citrus District Three: Charlotte, Citrus, Collier, Hernando, Hendry, Hillsborough, Lake, Lee, Manatee, Monroe, Martin, Pasco, Palm Beach, Pinellas, Sarasota, Sumter, Broward, and Miami-Dade Counties.

Effect of Proposed Changes

The bill amends s. 601.09, F.S., providing Legislative intent for the citrus districts be reviewed and, if necessary to maintain substantially equal volumes of citrus production within each district, redistricted every 5 years. The commission may, once every 5 years, review the citrus districts based on the total

boxes produced within each district during the preceding 5 years and, based on the commission's findings, submit recommendations to the Legislature for redistricting.

Section 13

Present Situation

Section 601.10, F.S., provides the department with various powers. The department has the power to employ and, at its pleasure, discharge an executive director as it deems necessary. The executive director of the department is appointed by a majority vote of the commission for a term of 4 years, with confirmation by the Senate in the legislative session following appointment. The initial term of the executive director ends June 30, 2011, and each subsequent 4-year term begins July 1, and is filled in the same manner as the original appointment.

Current law requires employees of the department to work a 5 day, 40-hour week. Unless on approved leave, an employee's salary can be decreased by 20 percent for each day not worked during the 5-day work week if the employee chooses to regularly work less than a 5-day work week.

The department is given broad authority not only to adopt but to "alter, rescind, modify, or amend all proper and necessary rules, regulations, and orders for the exercise of its powers..."³ The department is separately authorized to adopt rules providing for the payment of certain insurance premiums for the benefit of full-time employees or the payment of similar benefits to its employees in foreign countries.⁴

The department also has the power to establish minimum maturity and quality standards for citrus fruits not inconsistent with existing laws. When, in the opinion of the department, the tax revenues collected pursuant to chapter 601, F.S., are not immediately needed for the purpose for which they were allocated, the Chief Financial Officer is authorized to, upon the request and approval of the department or its general manager, if he or she has been given such authority, invest and reinvest the funds designated and for the period of time specified in such request.

Effect of Proposed Changes

The bill amends s. 601.10, F.S., removing terms relating to the appointment of an executive director. This language has been relocated to s. 20.29, F.S. Regarding the working hours of the department employees, the bill deletes the language requiring a 20% reduction for each day an employee does not work during the 5-day work week if the employee chooses to regularly work less than a 5-day work week, and provides that, subject to all applicable requirements of Florida's Department of Management Services, the department must be staffed 5 days per week, 40-hours per week to accommodate industry inquiries. However, with commission approval, the executive director has the authority to set alternative schedules for individual department employees to ensure maximum efficiencies.

The department's authority to adopt and amend rules is revised to provide the rules and orders of the department shall have the force of law. Because of the requirements for taking final agency action under chapter 120, F.S., the Administrative Procedure Act (APA), agency orders are not readily amendable.⁵ Chapter 601 provides for to commission to enter certain orders that are not subject to the requirements of the APA.⁶ The bill leaves unclear which orders the department may "alter, rescind, modify, or amend" and whether such actions must comply with the APA.

³ Section 601.10(1), F.S.

⁴ Section 601.10(3)(b), F.S.

⁵ Sections 120.569, 120.68, 120.69, F.S.

⁶ For example, special marketing orders. Section 601.152(5)(a), F.S.

The bill makes the staffing of the department offices subject to all applicable rules of the Department of Management Services (DMS). Without specifying which version of these rules applies, the bill will be interpreted to impose on the department the DMS rules in effect on the date the bill becomes law.⁷

The bill clarifies the department's power to adopt, amend, or repeal, as well as to enforce, rules⁸ that establish minimum maturity and quality standards for citrus fruits. The bill also makes some technical changes to the statutes such as replacing "tax" with "assessment," "general manager" with "executive director," and "Department of Citrus" with "department."

Section 14

The changes made by the bill to section 601.101, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 15

Present Situation

Section 601.11, F.S., provides the department with the authority to establish state grades and minimum maturity and quality standards not inconsistent with existing laws for citrus fruits and food products.

Effect of Proposed Changes

The bill amends s. 601.11, F.S., establishing and clarifying the powers of the department to provide greater specificity for the establishment of state grades and minimum maturity and quality standards for citrus fruits and food products. These standards must be designed to increase the acceptance and consumption by the consuming public of such regulated citrus fruits and food products of citrus and may include, but are not limited to, standards for:

- Color break, predominant color, total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of oranges, grapefruit, and tangerines.
- Total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of citrus fruit grown in the state for export to foreign countries other than Canada and Mexico.
- Canned orange juice or frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, and absence of additives or defects, and labeling requirements for substandard juice. These standards may establish separate density, compositional, labeling, and inspection requirements for high-density frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment in retail, institutional, or bulk size containers.
- The processing, shipping, and sale of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added, including, but not limited to, total soluble solids of orange juice exclusive of the added nutritive sweetening ingredients; labeling requirements; and requirements for the inspection and reinspection of such concentrated orange juice before and after nutritive sweetening ingredients are added.
- Grapefruit juice products, including, but not limited to, standards for the ratio of soluble solids of juice to anhydrous citric acid and any other standards designed to increase the acceptance and consumption by the consuming public of such regulated grapefruit juice products.
- Canned blends of orange juice and grapefruit juice that are sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of

⁷ *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642, 655 (Fla. 1st DCA 2009); *Department of Business and Professional Regulation v. Lester*, Agency Case No. 2008001566, Final Order dated May 17, 2010, adopting *in toto* Recommended Final Order rendered by DOAH in Case No. 09-0642PL, 2009 WL 4099146 (November 24, 2009).

⁸ The original bill used the phrase "under chapter 120." The amendment adopted on January 24, 2012, deleted this phrase as redundant because all agency rulemaking must be conducted under the APA. Sections 120.52(1), 120.52(16), 120.54(1)(a), F.S.

soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, absence of defects, and labeling requirements for substandard juice blends.

In addition, the department is authorized to:

- Issue permits for the export to foreign countries other than Canada and Mexico of citrus fruit grown in the state.⁹
- Establish standards limiting any increase of spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes.

The bill authorizes the commission:

- To issue and renew permits for processors of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added and, in addition to disciplinary action that may be taken by the Department of Agriculture and Consumer Services (DACS) against a citrus fruit dealer for violations of chapter 601, F.S., to suspend or revoke the permit of any processor that does not comply with rules relating to the processing, shipping, and sale of frozen concentrated orange juice, labeling requirements, and inspection requirements as described above.
- To determine whether freezing temperatures have caused damage or freeze-related injury to citrus fruit and, if the commission determines that such damage has been caused, issue emergency quality assurance orders that:
 - Temporarily prohibit the preparation for market, sale, offer for sale, or shipment of any citrus fruit showing freeze damage or freeze-related injury.
 - Establish the degree of freeze damage or freeze-related injury that is temporarily permitted in citrus fruit used in frozen concentrate products, including concentrate for manufacturing purposes.

The bill clarifies the department's authority to adopt rules pertaining to the marking, branding, etc., and grading of citrus fruit and products, and the use of certain used containers.¹⁰ The bill makes other non-substantive, technical revisions to s. 601.11, F.S., which do not change the statutory meaning.

Section 16

Present Situation

Section 601.111, F.S., provides legislative findings that climatic conditions can cause abnormal conditions to the Florida citrus industry that require the department to lower the maturity standards established by law for any variety of citrus fruit, not including oranges except as specified in s. 601.111(2), F.S. The lowering of the maturity standards must comply with the limitations, conditions, restrictions, provisions, and standards prescribed and established in chapter 601, F.S. In the event of an emergency, the department, in addition to the authority and power currently granted or delegated by the Legislature, has the additional power to issue rules and regulations to:

- Lower by not more than 10 percent the existing minimum requirement as to the total soluble solids of the juice of citrus fruit or any variety, except oranges, or size thereof;
- Lower by not more than 10 percent the existing ratio of total soluble solids of the juice of citrus fruit or any variety thereof, except for oranges, to the anhydrous citric acid;
- Lower by not more than 10 percent the existing minimum requirement for juice content of citrus fruit or any variety or size thereof; and

⁹ Provisions in state law pertaining to export activities may not conflict with federal authority over foreign affairs and trade. *National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999); *ABC Charters, Inc. v. Bronson*, 591 F. Supp.2d 1272 (SD Fla. 2008).

¹⁰ The amendment adopted on January 24, 2012, deleted a redundant reference to rulemaking in compliance with ch. 120, F.S.; see note 8, above.

- Lower by not more than 10 percent the existing minimum requirement for the content of anhydrous citric acid for oranges.

Before any of the above actions can be taken, at least 9 members of the commission must consent. Additionally, any regulation adopted regarding the above actions must be by the affirmative vote of at least nine members of the commission, and every such regulation must contain an expiration date of no later than 1 year from its effective date. The act of lowering maturity standards does not repeal any other section or part of chapter 601, F.S., but is supplemental and additional to the power vested in the department, subject only to the limitations, restrictions, conditions, provisions, and standards set forth in s. 601.111, F.S.

Effect of Proposed Changes

The bill amends s. 601.111, F.S., to remove the criteria currently in statute to lower maturity standards in the event of an emergency for citrus fruit varieties and allows the department to adopt rules temporarily modifying maturity standards according to the emergency rulemaking requirements of the APA.¹¹ The bill provides that an emergency rule adopted under this section cannot take effect without the affirmative vote of at least 7 members of the commission and must contain an expiration date of no later than 1 year from its effective date.

Under the APA, emergency rules may not be effective for more than ninety days.¹² The bill expressly excludes rules adopted under s. 601.111, F.S., from the 90 day effective limit for emergency rules provided in the APA, preserving the current requirement for such emergency rules of the department to have an expiration date of no later than one year from going into effect.¹³ Other changes made to s. 601.111, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 17

Present Situation

Section 601.13, F.S., provides for administration of citrus research by the department. The department has authority to conduct, or arrange to be conducted, studies of citrus fruit and juices. The studies are conducted with respect to the quality and maturity of the fruit and juices, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and to reduce such findings to specific and easily understood chemical, mathematical, or descriptive terms. The studies also must explore the nutritional and other values of citrus fruit and juices. The studies and research conducted must be sufficient to provide all information and data required to be disseminated pursuant to chapter 601, F.S. The department must provide suitable laboratory facilities and equipment as necessary, as well as making use of the laboratory facilities and equipment of the University of Florida when practicable, to conduct studies and research to determine all possible new and further uses for citrus fruit and juices and their by-products. The studies and research may be used to determine and develop new and profitable methods and instruments of distribution for citrus fruit and juices. Suitable experiments may be conducted to prove the commercial value of citrus fruit and juices and to determine and develop new and other uses for the fruit and juices or their by-products. Suitable experiments may be conducted to prove the commercial value of any new profitable methods and instruments of distribution of citrus fruit and juices and their by-products. The department may conduct, or arrange to be conducted, an economic and marketing research program relating to citrus fruits, products and by-products.

The department has the authority to enter into any mutual contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, which the department deems necessary to carry out the provisions of chapter 601, F.S. The department may also incur and pay such expenses and obligations that are necessary in carrying out the provisions of

¹¹ Section 120.54(4), F.S.

¹² Section 120.54(4)(c), F.S.

¹³ Section 601.111(2), F.S.

chapter 601, F.S. Section 601.13(3), F.S., provides an appropriation for defraying the expenses of administering this section of law. This appropriation comes from the advertising excise taxes levied on citrus fruit in such amounts as the department may deem necessary within the percentage limitations imposed by s. 601.15, F.S.

Effect of Proposed Changes

The bill amends s. 601.13, F.S., to require the department to conduct, or cause to be conducted, any research related to disease and crop efficiency that would advance the purposes of Florida's citrus industry and commercialization related to advancing such research.

Other changes made to s. 601.13, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 18

Present Situation

Section 601.15, F.S., provides for an excise tax to be levied and imposed on each standard-packed box of citrus fruit grown and placed into the primary channel of trade in the state. The tax is computed at the maximum annual rates for each citrus season as determined from the tables presented in s. 601.15(3)(a), F.S., and based on the previous season's actual statewide production as reported in the United States Department of Agriculture Citrus Crop Production Forecast as of June 1. The rates may be set at a higher or lower rate in any year upon an affirmative vote of a majority of the members of the commission and by an order entered by the commission prior to November 1 of any year; however, the rate may not exceed the maximum rate. The rate applies only to the citrus season which began on August 1 of the same calendar year. The tax rate may be applied by variety and on the basis of whether the fruit enters the primary channel of trade for use in fresh or processed form. If the commission cannot agree on a box tax rate, the tax rate for the previous year will remain in effect until the commission approves a new rate.

Whenever citrus fruit is purchased, acquired, or handled on a weight basis, the following weights are deemed the equivalent of one standard-packed box for tax purposes: grapefruit, 85 pounds; oranges, 90 pounds; tangerines, 95 pounds; and citrus hybrids, 90 pounds. The excise taxes do not apply to citrus used for noncommercial domestic consumption on the premises where produced. For purposes of assessing an excise tax, a citrus season begins on August 1 of a year and ends on July 31 of the following year.

Taxes levied and imposed pursuant to s. 601.15, F.S., are due at the time the citrus fruit is first handled in the primary channels of trade. The taxes are paid to the department by the person first handling the fruit in the primary channel of trade, except that payment of taxes on fruit delivered or sold for processing in this state must be paid by the person processing the fruit. In accordance with department rules, periodic payment of taxes on citrus fruit is permitted. Periodic payments must be guaranteed by the posting of a good and sufficient cash bond, an appropriate certificate of deposit, or an approved surety bond in an amount and manner as prescribed by rule of the department. Evidence of guarantee of payment must be made on the grade certificate in a manner and form established by the department. The statute also contains a reference to a settlement agreement and dismissal of a suit against the department under the foreign commerce clause¹⁴ brought in the Circuit Court of the Tenth Judicial Circuit in Polk County, Case no. 2002-CA-4686.

Effect of Proposed Changes

The bill amends s. 601.15, F.S., substituting the term "assessment" for "excise tax." The bill also sets the maximum assessment for grapefruit entering the primary channel of trade for use in fresh or processed form at 36 cents per box. The maximum assessment for oranges entering the primary

¹⁴ Art. I, s. 8, cl. 3, U.S. Const.

channel of trade in the fresh form is 7 cents per box and 25 cents per box in the processed form. The bill provides that the actual assessment levied each year on tangerines and citrus hybrids regulated by the department that enter the primary channel of trade for use in processed form cannot exceed 25 cents per box or 16 cents per box in the fresh form. The bill provides that persons liable for the periodic payments of assessments must also submit a letter of credit from an issuing financial institution located in the United States to guarantee payment.

Other changes made to s. 601.15, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 19

Other than changing the majority of voting members of the commission from nine to seven, the changes made to s. 601.152, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 20

Present Situation

Section 601.155, F.S., provides that equalizing excise taxes are due and payable within 61 days after the first of the taxable privileges is exercised in the state. Periodic payment of the taxes are permitted only in accordance with department rules and must be guaranteed by the posting of an appropriate certificate of deposit, approved surety bond, or cash deposit in an amount and manner determined by the department.

Effect of Proposed Changes

The bill amends s. 601.155, F.S., substituting the term "assessment" for "excise tax." The bill provides that persons liable for the periodic payment of assessments must submit a letter of credit from an issuing financial institution located in the United States to guarantee payment.

Other changes made to s. 601.15, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Sections 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, and 46

The changes made by the bill to sections 601.24, 601.25, 601.28, 601.31, 601.32, 601.33, 601.34, 601.35, 601.37, 601.38, 601.40, 601.43, 601.44, 601.45, 601.46, 601.49, 601.50, 601.501, 601.51, 601.52, 601.54, 601.55, 601.57, 601.58, and 601.60, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 43

Present Situation

Section 601.56, F.S., establishes the requirements for citrus fruit dealer licenses. Application must be made to the department and provide not only the information specified in the statute but "...other information which may be prescribed by the department."¹⁵ The rule adopted to implement this section requires only the information required by the statute "and such other information deemed necessary by the Department of Citrus to make a proper determination of whether or not the application shall be approved..."¹⁶

¹⁵ Section 601.56(1), F.S.

¹⁶ Rule 20-1.001, F.A.C.

Effect of Proposed Changes

The changes made by the bill are technical revisions that do not change the statutory meaning. However, under the principles discussed below in the “Comments” section under “Rule-Making Authority,” the language in the statute may be interpreted as not providing sufficient guidance and clarity for the department to exercise its rulemaking authority.

Section 47

Present Situation

Section 601.601, F.S., requires licensed citrus fruit dealers to register each of their agents with DACS. Applicants must meet the criteria specified in s. 601.601(1), F.S., and the additional requirements set by the department in subsection (2) of the statute. The statute does not specify what type of additional requirements the department may impose. The rule adopted by the department requires each application to provide the proposed agent’s “full name, address, date of birth, fingerprints, social security number, etc.”¹⁷

Effect of Proposed Changes

The changes made by the bill are technical revisions that do not change the statutory meaning. However, under the principles discussed below in the “Comments” section under “Rule-Making Authority,” the language in the statute may be interpreted as not providing sufficient guidance and clarity for the department to exercise its rulemaking authority.

Section 48

Present Situation

Section 601.61, F.S., establishes bond requirements for citrus fruit dealers. Prior to the approval of a citrus fruit dealer’s license, the applicant must provide the department with a good and sufficient cash bond, appropriate certificate of deposit (CD), or a surety bond executed by the applicant as principal and by a surety company qualified to do business in the state as surety, in an amount determined by the department. The amount of the bond or the CD is determined by taking into consideration any one or more of the following factors:

- The number of standard packed boxes of citrus fruit, or the equivalent thereof, which the applicant intends to handle during the term of the license as set forth in the application;
- The total volume of fruit handled by the dealer the previous season;
- The highest month’s volume handled the previous season;
- The anticipated increase in the total citrus crop during the season for which the application for license is made; and
- Other relevant factors based on the following schedule:
 - \$1,000 up to 2,000 boxes;
 - \$2,000 up to 5,000 boxes;
 - \$3,750 up to 7,500 boxes;
 - \$5,000 up to 10,000 boxes;
 - \$10,000 up to 20,000 boxes;
 - 1,000 for each additional 20,000 boxes or fraction thereof in excess of 20,000 boxes, with a maximum bond of \$100,000.

If, during the term of her or his license, a citrus fruit dealer finds that she or he has handled, or can reasonably expect to handle a volume of fruit greater than that covered by a posted bond or CD, the dealer has the affirmative duty of immediately notifying DACS and initiating an increase in such bond or CD to an amount that will meet the requirement set forth in this section.

¹⁷ Rule 20-1.008(2), F.A.C.

The department or DACS, or any officer or employee designated by the department or DACS, has the right to inspect such accounts and records of any citrus fruit dealer as may be deemed necessary to determine whether a bond which has been delivered to DACS is in the amount required by this section or whether a previously licensed non-bonded dealer should be required to furnish bond. If any such citrus fruit dealer refuses to permit such inspection, DACS may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given. Upon a finding by DACS that any citrus fruit dealer has dealt or probably will deal with more fruit during the season than shown by the application, DACS may order such bond increased to such an amount as will meet the requirements as set forth in the bond schedule. Upon failure to file such increased bond within the time fixed by DACS, DACS may publish the facts and circumstances and by order suspend the license of such citrus fruit dealer until the said bond is increased as ordered.

Section 601.61, F.S., provides that if any of the provisions of this act are held unconstitutional or invalid for any reason by any court of competent jurisdiction or if such court finds or declares that no applicant is required to furnish the bond required by this act, this entire act is ineffective for any and all purposes and the laws in effect on July 31, 1965, that are amended by this act, are not deemed to be amended or repealed by this act but shall remain in full force and effect it being the intention of the Legislature that in such event this entire act is ineffective for any and all purposes and the laws in effect on July 31, 1965, that are amended and repealed by this act shall not be amended or repealed but shall remain in full force and effect.

Effect of Proposed Changes

The bill amends s. 601.61, F.S., to allow the department to promulgate rules pursuant to chapter 120,¹⁸ F.S., to determine the bond requirements for citrus fruit dealers. The bill deletes the schedule relating to a dollar amount per standard packed boxes of citrus as part of the criteria for the department to consider when determining the bond requirements, as discussed above.

The bill also deletes s. 601.61(6), F.S., relating to the constitutionality of any of the provisions of this section discussed above.

Sections 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61

The changes made by the bill to sections 601.64, 601.66, 601.67, 601.69, 601.70, 601.701, 601.731, 601.74, 601.75, 601.76, 601.77, 601.78, and 601.80, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 62

Present Situation

Section 601.85, F.S., provides that the specifications for the standard legal shipping box, crate, or container to be used in shipping fresh citrus fruits must be as established by the department; but provided that the unit of standard-packed box, commonly called 1 3/5 bushels, must contain an inside cubical measurement of 3,456 cubic inches.

Effect of Proposed Changes

The bill amends s. 601.85, F.S., to provide that the specifications for the standard shipping box, when used as a unit of trade or for reporting purposes, must be established by the department, but the unit of a standard-packed box, commonly called 1 3/5 bushels, must contain an inside cubical measurement of 3,456 cubic inches.

¹⁸ This language is redundant. See note 8, above.

Section 63

Present Situation

Section 601.86, F.S., provides that all field boxes used in the purchase, sale, or handling of citrus fruit from or for the grower by a citrus fruit dealer in the state must be of the uniform standard size of 31½ inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths inch thickness; and each of these compartments thus created must have a cubical capacity of not more than 2,400 cubic inches.

Effect of Proposed Changes

The bill amends s. 601.86, F.S., to provide that the standard field box or its equivalent, when used as a unit of trade or for reporting purposes, must be of the uniform standard size of 31½ inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths inch thickness; and each of these compartments thus created must have a cubical capacity that does not exceed 2,400 cubic inches.

Sections 64, 65, 66, 67, and 68

The changes made by the bill to sections 601.91, 601.9901, 601.9902, 601.9903, and 601.99035, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 69

Present Situation

Section 601.99036, F.S., provides that any change in the salary of an employee of the department that is at or above \$100,000 annually must be approved by the full membership of the commission at the commission meeting in July 2003, or at the first subsequent meeting, and before any subsequent salary adjustment is made.

Effect of Proposed Changes

The bill amends s. 601.99036, F.S., to provide that any changes in the annual salary of a department employee who earns \$100,000 or more must be approved by a majority of the commission before the salary adjustment is made.

Sections 70 and 71

The changes made by the bill to sections 601.9904 and 601.9908, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 72

Present Situation

Section 601.9910, F.S., provides legislative findings regarding maturity standards for citrus. The legislative findings include:

- The shipment of raw immature citrus fruit, generally designated as “green fruit,” from the state to consuming markets has caused the loss of millions of dollars to the citrus growers of Florida; also has resulted in the lowering of the standard of living of many of its citizens; adversely affected the economic conditions of the entire state; reduced the receipts in the collection of ad valorem taxes, thereby reducing revenue needed by counties and cities; caused financial loss to the growers and shippers and processors who did not engage in the shipment of green fruit; and that such practice each year hurts the good name and reputation of all Florida citrus.

- After extensive hearings conducted annually, and after many hearings attended by citrus committees at various citrus industry meetings throughout the citrus area; and after having had the advice and counsel of the best qualified and most expert technical advisers in the Florida citrus industry, and after having had the benefit of the advice of some of the most expert and best informed growers, shippers, and processors, and after having made a careful study of the reaction of all citrus fruits by reason of changes in climatic conditions, and having found that regardless of the color of an orange or the color of a grapefruit or regardless of the juice content of such fruits, finds such fruit may be immature and unfit for human consumption. It is also recognized by experts that there are certain factors entering into the maturity of fruit that are not now measurable by chemical tests. There is a change brought about by time and nature in the blending of solids and acids into juice that characterizes maturity but not in a manner susceptible to chemical determination. Because of this, it is scientifically sound that the minimum requirements for solids and the ratio of solids to anhydrous citric acid in determining maturity be relaxed as the season progresses and the raw, immature flavor characteristic of fruit early in the season has disappeared through the workings of time and nature. Therefore, the Legislature hereby finds and determines and so declares that, until nature has completed its process of removing the raw, immature flavor, such citrus fruit will still be immature and unfit for human consumption and, when marketed, will result in dissatisfied consumers who will cease purchasing Florida citrus for some time and will classify that fruit that they had purchased as "Florida green fruit."
- There is no better method of determining when such raw and immature flavor leaves Florida citrus than by the standards set forth in chapter 601, F.S.; and that experience has demonstrated over a period of many years, by the best available records and under various climatic conditions and various seasonal changes, that generally speaking prior to November 1 of each season oranges that do not have a total soluble solids of 9 percent with a minimum ratio of total soluble solids, as set in s. 601.20, F.S., still have a raw, immature flavor; and that, beginning on or about November 1 of each season, such raw, immature fruit flavor gradually disappears from the orange and by November 15 the same orange may have a still lower soluble solids percentage and not be immature; and after November 15 can still have a further lower soluble solids percentage and not be immature; and by December 1 nature has completed its process of removing the raw, immature flavor that might have existed prior to that time, provided such fruit meets the other minimum maturity requirements set forth in chapter 601, F.S. On December 1 oranges meeting the requirements of s. 601.19(4), F.S., while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor. On December 1 grapefruit meeting the requirements of s. 601.14(4), F.S., while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor.
- The enforcement of the maturity standards, as set forth in chapter 601, F.S., will not result in preventing any grower from marketing his or her fruit at some time during the marketing season, whenever nature has removed the raw, immature flavor; and, if there is a delay in such marketing, it will result in higher prices for the entire season, bringing additional millions of dollars to the growers of Florida and resulting in benefit to all growers, including the grower or growers who were delayed a short time in the shipment of their fruit.

Effect of Proposed Changes

The bill amends s. 601.9910, F.S., to correct cross-references to statutory cites that have been repealed. The bill provides for the factors affecting the maturity levels of citrus fruit to be established by the department through the rule-making process.

Sections 73, 74, and 75

The changes made by the bill to sections 601.9911, 601.9918, and 601.992, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 76

The bill amends s. 603.161, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 77

Present Situation

Section 601.16, F.S., establishes the grapefruit maturity standards for fresh and processed fruit. The statutes lay out specific standards for seedless grapefruit for fresh use, seeded grapefruit for fresh use, grapefruit to be processed into juices and juice products, and grapefruit for processing into grapefruit sections and salads. Current law also allows the commission to adopt rules, for the period of April 15 through July 31, to adjust any minimum total soluble solids requirement for grapefruit processing purposes. Any such rule automatically expires on July 31 following its adoption.

Section 601.17, F.S., establishes minimum ratios of solids to acids for grapefruit. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.18, F.S., establishes the minimum juice content for grapefruit. Current law provides specific requirements for the cubic centimeters of juice that grapefruit must contain during the various growing seasons.

Section 601.19, F.S., establishes the maturity standards for oranges. The statutes lay out specific maturity standards for oranges during the various harvesting seasons.

Section 601.20, F.S., establishes the minimum ratios of solids to acid for oranges. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.21, F.S., establishes maturity standards for tangerines. The statutes lay out specific maturity standards for tangerines during the various harvesting seasons.

Section 601.22, F.S., establishes the minimum ratios of solids to acid for tangerines. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.87, F.S., provides that the height of the end heads and the center partition of field boxes cannot be increased more than 1¼ inches by the addition of cleats or any similar addition to the height so that the total height of the boxes from the inside bottom to the top of the cleats do not exceed 14¼ inches. It is unlawful to place cleats or any other device or thing on the bottom or top, other than herein provided, of any standard citrus field box whereby the space between the field boxes when stacked will be greater than the space that exists between such standard field boxes as herein defined.

Section 601.90, F.S., provides that when freezing temperatures of sufficient degree to cause serious damage to citrus fruit occur in all major citrus-producing areas of the state, the commission, upon call of the chair and with such notice as may be appropriate under the circumstances, must meet within 96 hours of the last occurrence of such freezing temperatures to determine whether or not such temperatures have caused damage to citrus fruit and, if so, the degree of such damage.

If, at such meeting, the commission determines that serious damage, as defined by statute, has occurred to such citrus fruit, it may, upon majority vote, enter an emergency quality assurance order providing for one or more of the following:

- Prohibiting the preparation for market, sale, offering for sale, or shipment of citrus fruit for a period not to exceed 10 days after commencement of the order period.
- Prohibiting the sale, offering for sale, or shipment of any citrus fruit showing "damage," as defined by statute, for a subsequent period not to exceed 14 additional days.

- Prohibiting the sale, offering for sale, or shipment in offshore export trade channels, of citrus fruit showing any degree of internal freeze-related injury, as defined by statute, for a period not to exceed 30 days from commencement of the order period.

Any emergency order entered pursuant to this section becomes effective upon adoption by the commission, the provisions of chapter 120, F.S., to the contrary notwithstanding, and have the full force and effect of the law. The order period commences at a time established by the commission in its order, but not sooner than 36 hours following adoption of the order.

Emergency quality assurance orders are not applicable to any citrus fruit sold or transported to a citrus processing plant for processing purposes or to any citrus fruit inspected, packed, and certified for shipment prior to commencement of the order period. However, any such citrus fruit not shipped within 48 hours of commencement of the order period must be reinspected, on a random basis, and recertified as damage-free. An order may provide for reasonably extended packinghouse inspection hours prior to commencement of the order period.

Section 601.901, F.S., provides that at any time subsequent to a commission determination, pursuant to s. 601.90, F.S., if serious damage has resulted to citrus fruit from freezing temperatures, the commission may, at a regular or special meeting, establish by order the maximum degree of freeze damage or freeze-related injury to be permitted in citrus fruit used in preparation of any frozen concentrated products, including concentrate for manufacturing purposes, for the purpose of protecting the quality of such processed products.

Notwithstanding the provisions of chapter 120, F.S., any order adopted by the commission pursuant to this section becomes effective at a time fixed by the commission, but not less than 24 hours from the time of adoption, and expires at a time fixed by the commission, but in no instance later than the end of the current shipping season.

This section does not repeal any other authority now or hereafter delegated to the department, but is deemed as additional and supplemental authority vested in the department, and should any part of this section be held to be unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court does not affect the remaining portions of this section. It is the intention of the Legislature that this section would have been adopted had such unconstitutional or such unenforceable provision not been included herein.

Section 601.981, F.S., provides that during each shipping season the department is authorized and empowered to issue permits allowing citrus fruit grown in Florida, whether color-added or otherwise, to be exported to all foreign countries, other than Canada and Mexico, when the total soluble solids of the juice thereof and the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid and the juice content thereof is within a tolerance not exceeding 10 percent of the standards established by law, provided such citrus fruit is loaded on chartered vessels at a Florida port. The department can promulgate such rules and regulations as it deems necessary or required to control such permits.

Section 601.9905, F.S., provides that canned orange juice cannot be sold or offered for sale or shipped or offered for shipment that:

- Is prepared from raw juice containing before the addition of any additive less than 8.5 percent total soluble solids;
- When canned, contains less than 10 percent total soluble solids;
- Has a ratio of total soluble solids to anhydrous citric acid of less than 9 to 1;
- Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid;
- Contains more than 0.050 percent recoverable oil; or
- Does not meet requirements to be established by the department regarding color, absence of defects, taste, and flavor; unless the immediate container thereof is labeled in accordance with regulations of the department and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9906, F.S., applies to canned grapefruit juice, chilled grapefruit juice, frozen concentrated grapefruit juice, concentrated grapefruit juice for manufacturing, and such other grapefruit juice products as the commission may by rule prescribe that may be consumed as juice or used to produce other grapefruit juice products that may be consumed as juice.

This section does not apply to any grapefruit juice products to which have been added ready detectable quantities of one or more readily detectable ingredients, that the commission can specify by rule, which ingredients are impermissible in the grapefruit juice products described above but are appropriate for use in one or more other products that are not consumed as juice, such as diluted fruit juice beverages or beverage bases used to produce diluted fruit juice beverages.

No grapefruit juice products can be sold or offered for sale or shipped or offered for shipment that have a minimum ration of total soluble solids to anhydrous citric acid of less than seven and one-half to one, or such higher ratio as the commission may prescribe by rule.

The commission can prescribe by rule quality standards for grapefruit juice products. Such standards must be designed to further the acceptance and consumption of grapefruit juice products so regulated.

Section 601.9907, F.S., provides that no canned blend of orange and grapefruit juice can be sold or offered for sale or shipped or offered for shipment that:

- Is prepared from mixed raw juice of oranges and grapefruit containing before the addition of any additive less than 8 percent total soluble solids;
- When canned, contains less than 9.5 percent total soluble solids;
- Has a ratio of total soluble solids to anhydrous citric acid of less than 8 to 1;
- Contains less than 0.65 percent or more than 1.80 percent anhydrous citric acid;
- Contains more than 0.040 percent recoverable oil; or
- Contains when mixed and before canning more or less than the percentage of orange juice determined by rule or regulation of the department required to be contained therein and does not meet requirements to be established by the department regarding color, absence of defects, taste and flavor; unless the immediate container thereof is labeled in accordance with regulations of the department, and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9909, F.S., provides that, subject to the provisions of ss. 601.9913 and 601.9914, F.S., frozen concentrated orange juice cannot be sold, offered for sale, shipped or offered for shipment if:

- It is concentrated to less than 41.8 or more than 47 degrees Brix.¹⁹ The Brix reading, if determined refractometrically, must include corrections for citric acid.
- It has a lower ratio of total soluble solids to anhydrous citric acid of less than 12 to 1 or a higher ratio of total soluble solids to anhydrous citric acid than 19.5 to 1.
- It contains more than 0.120 milliliters of recoverable oil per 100 grams of concentrate.
- It contains any additives of any kind.
- It does not taste essentially the same as freshly expressed orange juice of similar quality and is not completely free of all fermented, cooked, terpeny, or other off-flavors; or it does not meet all requirements of the rules of the department regarding color, absence of defects, taste, and flavor; unless the immediate container thereof is labeled in accordance with rules of the department and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9913, F.S., provides that "high-density frozen concentrated orange juice" is frozen concentrated to a density greater than 47 degrees Brix. All high-density frozen concentrated orange

¹⁹ "Brix" refers to a hydrometer scale for sugar solutions measuring the percentage by weight of sugar in the solution at a specific temperature. Definition at <http://www.merriam-webster.com/dictionary/brix> (last accessed 1/20/2012).

juice sold or shipped, or offered for sale or shipment, in retail or institutional size containers must comply with all requirements applicable to frozen concentrated orange juice in retail or institutional containers, except as to the density of the concentrated food. The percent by weight of orange juice soluble solids contained in the reconstituted food made from high-density frozen concentrated orange juice when the label directions for dilution are followed are the same as is prescribed by the department for frozen concentrated orange juice in retail or institutional size containers.

The name of high-density frozen concentrated orange juice, when sold in retail or institutional size containers, is "frozen concentrated orange juice, _____ plus 1," the blank being filled in with the whole number showing the dilution ratio in conspicuous type consistent with the size of the container and in conjunction with the product name. Where the label bears directions for making one quart or multiples of a quart, the blank may be filled in with a number that includes a fraction. The term "dilution ratio" means the number of volumes of water per volume of high-density frozen concentrated orange juice prescribed by the label for reconstituting the food. The nomenclature requirements of this subsection do not apply to containers for postmix dispenser use, or to retail containers designed solely for use in foreign countries, provided the labeling thereof contains mixing instructions adequate to inform the institution or the consumer of the correct dilution ratio.

The name of high-density frozen concentrated orange juice, when sold in bulk size containers, is the name provided in subsection (3), or "frozen concentrated orange juice, _____ Brix," the blank being filled in with the number that expresses the percent by weight of orange juice soluble solids contained in the food, in conspicuous size and in conjunction with the product name.

The compositional requirements applicable to high-density frozen concentrated orange juice sold in bulk size containers are prescribed by department rule. The definition of retail, institutional, and bulk size containers for high-density frozen concentrated orange juice also are prescribed by rule.

All high-density frozen concentrated orange juice sold or shipped or offered for sale or shipment must be inspected as provided by law or rule for the inspection of frozen concentrated orange juice, and all fees and taxes must be paid in the manner as provided by law or rule.

Section 601.9914, F.S., provides that the commission may modify by rule, within the limitations specified, the requirements of ss. 601.9905-601.9909, F.S., if the commission first, upon the affirmative vote of nine members, determines that the adoption of such rule is likely to further increase the acceptance and consumption by a substantial segment of the consuming public of the citrus product or products regulated by such proposed rule and that such increase in acceptance and consumption will be of substantial benefit to handlers and producers of citrus fruit. This section also provides that the requirements of ss. 601.9905-601.9909, F.S., may be modified by rule within the following limitations:

- The existing requirements with respect to minimum or maximum Brix or the existing requirements with respect to minimum percent of total soluble solids may be raised;
- The existing requirements with respect to minimum ratio of total soluble solids to anhydrous citric acid may be raised, and the requirements with respect to maximum ratio of total soluble solids to anhydrous citric acid may be raised or lowered;
- The existing requirements with respect to the minimum or maximum amount of percentage of recoverable oil may be raised or lowered; and
- The existing requirements with respect to the minimum or maximum percentage of anhydrous citric acid may be raised or lowered.

Section 601.9916, F.S., authorizes the department, upon the affirmative vote of not less than nine members of the commission, to issue permits for the processing, shipping, and sale of frozen concentrated orange juice or concentrated orange juice for manufacturing to which has been added any of the following optional nutritive sweetening ingredients: sugar, sugar syrup, and invert sugar syrup.

Each permitted processor must comply with the rules established by the department that provide:

- Such product must be inspected immediately prior to the addition of the optional sweetening ingredient and must be reinspected promptly after the addition of the optional sweetening ingredient.
- If such product is to be stored, sold, or shipped in retail or institutional size containers of less than 1 gallon, it must, when reconstituted according to label directions, contain not less than 12.8 percent by weight of orange juice soluble solids, exclusive of the weight of any added optional nutritive sweetening ingredient, and must, each time it is inspected, fully conform to the rules and standards of the department applicable to frozen concentrated orange juice in retail or institutional size containers.
- If such product is to be stored, sold, or shipped in bulk containers of 1 gallon or larger, it must contain not less than 47 percent by weight of orange juice soluble solids, exclusive of the solids of any added optional sweetening ingredient, and must, when reconstituted according to label directions, contain not less than 11.8 percent by weight of orange juice soluble solids, exclusive of any added optional nutritive sweetening ingredient, and must, each time it is inspected, fully conform to the rules and standards of the department applicable to concentrated orange juice for manufacturing.
- If any such product has been filled into bulk containers of 1 gallon or larger, it cannot later be filled into retail or institutional size containers unless it fully conforms to the requirements of s. 601.9916 (2)(b), F.S.
- The product must conform to such labeling requirements as the department prescribes by rule.

The privilege of processing any such product under a permit issued by this section expires at the end of the shipping season for which such processing was authorized by such permit but may be renewed annually upon the affirmative vote of not less than nine members of the commission.

In addition to the disciplinary action that may be taken by DACS against a citrus fruit dealer for violations of chapter 601, F.S., the commission may temporarily suspend and revoke any permit issued for any violation of the provisions of this section or of the rules promulgated under this section.

Effect of Proposed Changes

Effective January 1, 2013, the bill repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 901.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 601.9913, 601.9914, and 601.9916, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.29, F.S.; providing for the appointment, compensation, and powers and duties of the department's executive director.

Section 2: Amends s. 570.55, F.S.; correcting cross-references.

Section 3: Amends s. 600.041, F.S.; correcting cross-references.

Section 4: Amends s. 601.01, F.S.; revising a short title.

Section 5: Amends s. 601.03, F.S.; amending definitions; and, providing a definition for "department."

Section 6: Amends s. 601.04, F.S.; revising the qualifications and terms of members of the commission; providing for staggered terms of members appointed from each district; providing for shortened terms for current members; providing for reappointment of members; deleting obsolete provisions; requiring commission to elect a chair and a secretary; and, deleting legislative intent regarding redistricting of the commission.

Sections 7-11: Amends ss. 601.045, 601.05, 601.06, 601.07, and 601.08, F.S.; providing conforming provisions.

Section 12: Amends s. 601.09, F.S.; providing legislative intent; and, authorizing the commission to provide recommendations to the Legislature for redistricting of the state's citrus districts.

Section 13: Amends s. 601.10, F.S.; revising the department's powers; deleting provisions relating to the department's executive director; establishing staffing requirements for the department; deleting provisions relating to the days, hours, and other conditions of employment for department employees; and, providing conforming provisions.

Section 14: Amends s. 601.101, F.S.; providing conforming provisions.

Section 15: Amends s. 601.11, F.S.; revising the powers and duties of the department to adopt maturity and quality standards for citrus fruit and citrus fruit products; authorizing the department to issue permits for the export of citrus fruit grown in the state to certain foreign countries; authorizing the department to issue permits for processors of concentrated orange juice into which nutritive sweetening ingredients are added and to suspend or revoke the permits of processors that violate certain rules; authorizing the department to issue emergency quality assurance orders upon determining that freezing temperatures have caused damage or freeze-related injury to citrus fruit; authorizing the department to limit increases in spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; and requiring the department to adopt rules.

Section 16: Amends s. 601.111, F.S.; revising the department's authority to modify maturity standards for citrus fruit and the number of commission members required to approve such modifications; revising legislative intent; authorizing the department to adopt emergency rules under the APA; and preserving the requirement that emergency rules temporarily modifying maturity standards shall be effective for no more than 1 year as opposed to the 90 day requirement in the APA.

Section 17: Amends s. 601.13, F.S.; revising the department's powers and duties for citrus research; providing for research related to disease and crop efficiency; and providing conforming provisions.

Section 18: Amends s. 601.15, F.S.; redesignating the advertising excise tax on citrus fruit as an assessment; revising the maximum rates of such assessments; revising the guarantee requirements for assessment payments; and providing conforming provisions.

Section 19: Amends s. 601.152, F.S.; revising the number of commission members required to issue marketing orders for special marketing campaigns and impose assessments upon citrus handlers to defray the expenses of such campaigns; and providing conforming provisions.

Section 20: Amends s. 601.155, F.S.; redesignating the equalizing excise tax on processed orange and grapefruit products as an assessment; revising the guarantee requirements for assessment payments; and, providing conforming provisions.

Sections 21-47: Amend ss. 601.24, 601.25, 601.28, 601.31, 601.32, 601.33, 601.34, 601.35, 601.37, 601.38, 601.40, 601.43, 601.44, 601.45, 601.46, 601.49, 601.50, 601.501, 601.51, 601.52, 601.54, 601.55, 601.56, 601.57, 601.58, 601.60, and 601.601, F.S.; providing conforming provisions and cross-references.

Section 48: Amends s. 601.61, F.S.; specifying that the amount of bonds or certificates of deposit that must be furnished by citrus fruit dealer licensees must be determined by the department pursuant to department rules; and deleting obsolete provisions relating to the applicability and effect of certain provisions if such provisions had been determined invalid.

Sections 49-61: Amend ss. 601.64, 601.66, 601.67, 601.69, 601.70, 601.701, 601.731, 601.74, 601.75, 601.76, 601.77, 601.78, and 601.80, F.S.; providing conforming provisions.

Sections 62-63: Amend ss. 601.85 and 601.86, F.S.; specifying dimensions for standard shipping boxes and standard field boxes for fresh citrus fruit; and, revising circumstances under which standard boxes must be used.

Sections 64-68: Amend ss. 601.91, 601.9901, 601.9902, 601.9903, and 601.99035, F.S.; providing conforming provisions.

Section 69: Amend s. 601.99036, F.S.; revising requirements for the commission's approval of changes in the salaries of certain employees.

Section 70-75: Amend ss. 601.9904, 601.9908, 601.9910, 601.9911, 601.9918, and 601.992, F.S.; providing conforming provisions.

Section 76: Amends s. 603.161, F.S.; conforming a cross-reference.

Section 77: Effective January 1, 2013, repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 601.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 901.9913, 601.9914, and 601.9916, F.S.; relating to maturity and quality standards for grapefruit, oranges, and tangerines; limits on increased spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; issuance of emergency quality assurance orders following freezing temperatures that cause damage or freeze-related injury to citrus fruit and the use of such freeze-damaged citrus fruit in frozen concentrated products; permits for the export to certain foreign countries of citrus fruit grown in the state and quality standards for such exported fruit; quality standards and labeling requirements for canned orange juice; quality standards for certain grapefruit juice products; quality standards and labeling requirements for canned blends of orange juice and grapefruit juice, frozen concentrated orange juice, and high-density frozen concentrated orange juice sold in retail, institutional, or bulk size containers; authority of commission to adopt rules modifying citrus juice quality standards for specified purposes; issuance of permits for the processing, shipping, and sale of frozen concentrated orange juice or concentrated orange juice for manufacturing into which certain nutritive sweetening ingredients are added; inspection of processors of concentrated orange juice; and, quality standards and labeling requirements for such concentrated orange juice.

Section 78: Provides an effective date of July 1, 2012, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None

2. Expenditures:
None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None

2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill authorizes the department to issue permits for export to foreign countries other than Canada or Mexico. Provisions in state law pertaining to export activities may not conflict with federal authority over foreign affairs and trade.²⁰

B. RULE-MAKING AUTHORITY:

- The bill revises and readopts the grant of rulemaking authority for the department to adopt, alter, rescind, or modify rules implementing its powers and duties under chapter 601, F.S. Specific sections of the bill revise and clarify rulemaking authority for particular duties, including the marking, branding, etc., and grading of citrus fruit and products, and the use of certain used containers (Section 15), conducting research related to disease and crop efficiency (Section 17), and determining bond requirements for citrus fruit dealers (Section 48).

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.²¹ Rulemaking authority is delegated by the Legislature²² through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”²³ a rule. Agencies do not have discretion whether to engage in rulemaking.²⁴ To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.²⁵ The grant of rulemaking authority itself need not be detailed.²⁶ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²⁷ If a law delegating authority to an administrative agency is vague, uncertain, or so broad as to give no notice of what actions would violate the law, it will be held unconstitutional because it leaves to the agency the power to state what the law is.²⁸ The Legislature thus must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rule-making authority to agencies but not the authority to determine what the law should be.²⁹

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 13 of the bill, the department’s authority to adopt and amend rules is revised to provide the rules and *orders* of the department shall have the force of law. Because of the requirements for taking final agency action under the APA, agency orders are not readily amendable.³⁰ Chapter 601, F.S., provides for entry of certain orders by the commission that are not subject to the requirements of the

²⁰*National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999); *ABC Charters, Inc. v. Bronson*, 591 F. Supp.2d 1272 (SD Fla. 2008).

²¹ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

²² *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

²³ Section 120.52(17), F.S.

²⁴ Section 120.54(1)(a), F.S.

²⁵ Section 120.52(8) & s. 120.536(1), F.S.

²⁶ *Save the Manatee Club, Inc.*, *supra* at 599.

²⁷ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

²⁸ *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

²⁹ *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

³⁰ Sections 120.569, 120.68, 120.69, F.S.

APA.³¹ The bill leaves unclear which orders the department may “alter, rescind, modify, or amend” and whether such actions must comply with the APA.

Section 13 of the bill also makes the staffing of the department offices subject to all applicable rules of the Department of Management Services (DMS). Without specifying which version of these rules applies, the bill will be interpreted to impose on the department the DMS rules in effect on the date the bill becomes law.³²

Sections 43 and 47 make technical changes to statutes pertaining to licensing and registration applicants. The changes made by the bill are technical revisions that do not change the statutory meaning. However, under the principles discussed above in Rule-Making Authority, the language in the existing statute may be interpreted as not providing sufficient guidance and clarity for the department to exercise its rulemaking authority.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Rulemaking & Regulation Subcommittee amended and approved the bill as a committee substitute. The amendment clarified proposed language in the bill pertaining to the powers of the department and the commission as well as revising present language in chapter 601, F.S., and proposed language in the bill pertaining to the department’s rulemaking authority.

This analysis is drawn to the committee substitute.

On February 1, 2012, the State Affairs Committee amended and approved the bill as a committee substitute. The amendment clarified that letters of credit must be from a “financial institution” rather than from a “bank”. This analysis is drawn to the committee substitute.

³¹ For example, special marketing orders. Section 601.152(5)(a), F.S.

³² *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642, 655 (Fla. 1st DCA 2009); *Department of Business and Professional Regulation v. Lester*, Agency Case No. 2008001566, Final Order dated May 17, 2010, adopting *in toto* Recommended Final Order rendered by DOAH in Case No. 09-0642PL, 2009 WL 4099146 (November 24, 2009).