

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 487 Agricultural Industry Certifications

SPONSOR(S): Higher Education & Workforce Subcommittee; Raburn and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Thomas	Sherry
2) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
3) Appropriations Committee			
4) Education Committee			

SUMMARY ANALYSIS

Current law requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process.

The bill requires the Department of Agriculture and Consumer Services (DACs), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and the Department of Education (DOE) information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill defines industry certification as:

- A voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be:
 - Within an industry that addresses a critical local or statewide economic need;
 - Linked to an occupation that is included in the workforce system's targeted occupation list; or
 - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACs to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs. The bill also requires the list of industry certifications approved by Workforce Florida, Inc., DACs, and DOE to be published and updated annually.

Under current law, a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land. In addition, an agritourism operator is not liable for injury resulting from the inherent risks of the agritourism activity, unless the operator is grossly negligent or intentionally injures the participant.

The bill amends the term "agritourism activity" to include skydiving.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Industry Certifications

Section 1003.492, F.S., requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) is required to define industry certification based upon the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.¹

DEO currently defines industry certification as “a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system’s targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need.”²

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc. must identify industry certifications that meet the DEO definition and compile them into a comprehensive list.³ Second, the Department of Education (DOE) must:

- Review the comprehensive list;⁴
- Identify certifications that are academically rigorous and at least 150 hours in length;⁵
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;⁶
- Consider district requests that industry certifications be added to the approved list;⁷ and
- Annually publish a final list.⁸

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demanding job requirements in the regional economy.⁹

Workforce Florida, Inc.’s, comprehensive list includes 428 industry certifications.¹⁰ From this list, DOE has identified 201 industry certifications and 287 postsecondary industry certifications as funding-eligible for the 2013 - 2014 school year.¹¹ Most industry certifications require passage of a subject area examination and some combination of work experience, educational attainment, or on-the-job training. DOE has approved industry certification in such career fields as information technology, automotive

¹ Section 1003.492(2), F.S.

² Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE*, at 1 (2012), available at <http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf>.

³ Section 1003.492(2), F.S.; Rule 6A-6.0573(1)-(3), F.A.C.; A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skills, high-wage, and high-demand job requirements in the regional economy.

⁴ Rule 6A-6.0573(3), F.A.C.

⁵ Rule 6A-6.0573(3)(b), F.A.C.

⁶ Rule 6A-6.0573(4), F.A.C.

⁷ Rule 6A-6.0573(4)(a) and (4)(b), F.A.C.

⁸ Rule 6A-6.0573(8), F.A.C.

⁹ Section 1003.492(2), F.S.

¹⁰ Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List*, <http://careersourceflorida.com/wp-content/uploads/2014/02/2013-14ComprehensiveCondensedFINAL.pdf>.

¹¹ Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. See also Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), available at www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf.

and aircraft mechanics, welding, and nursing. Certifying entities include Adobe Systems, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and the Florida Department of Health.¹²

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).¹³ The list may include both industry certifications that are achievable in a secondary education program and those that have requirements, such as minimum age, grade-level, diploma or degree, or post-graduation work experience of at least 12 months, that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allow students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.¹⁴

DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.¹⁵

Agritourism

Section 570.961, F.S., defines an “agritourism activity” as any agricultural activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures of facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the public. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

Current law¹⁶ provides that it is the intent of the Legislature to eliminate duplication of regulatory authority over agritourism. A local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida’s greenbelt law. This does not limit the powers and duties of a local government to address an emergency as provided in Chapter 252, F.S.¹⁷

Section 570.961(5), F.S. creates the term “inherent risks of agritourism activity,” which is defined to mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to

¹² See Florida Department of Education, Division of Career and Adult Education, *Industry Certification Descriptions*, <http://app1.fldoe.org/WEIndCert/Default.aspx> (last visited Mar. 12, 2014).

¹³ Section 1011.62(1)(p), F.S.; rule 6A-6.0573(3), F.A.C.

¹⁴ Section 1008.44(3), F.S. For industry certifications in which full certification cannot be achieved in a secondary program, the Commissioner of Education must differentiate the content, instructional, and assessment requirements for such industry certifications in determining funding. This allows students to work toward these certifications while in high school, without having to fulfill all requirements before graduation. *Id.*

¹⁵ Section 1003.492(3), F.S. A report of data on academies and career-themed courses must be submitted to the President of the Senate and Speaker of the House of Representatives by December 31, each year.

¹⁶ Section 570.96, F.S.

¹⁷ Chapter 252, F.S., relates to emergency management.

follow the instructions given by the agritourism professional¹⁸ or failing to exercise reasonable caution while engaging in the agritourism activity.

Section 570.963, F.S., provides that an agritourism professional is not liable for injury, death, damage, or loss to a participant resulting from the inherent risk of agritourism activities if the notice of risk is posted as required by law. A participant, or a participant's representative, may not maintain an action against or recover from an agritourism professional for the injury, death, damage, or loss to an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities. In an action for damages against an agritourism professional, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

The preceding provisions do not prevent or limit the liability of an agritourism professional if he/she:

- Commits an act or omission that constitutes negligence of willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant; or
- Intentionally injures the participant.

Effect of Proposed Change

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

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 - Within an industry that addresses a critical local or statewide economic need;
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 - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs. The list of industry certifications approved by Workforce Florida, Inc., DACS, and DOE must be published and updated annually.

The bill requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

Agritourism

The bill amends the term "agritourism activity" to include skydiving. Therefore, local governments are prohibited from adopting any ordinance or regulation that prohibits, restricts, or otherwise limits skydiving on land classified as agricultural land. In addition, skydiving operators will not be liable for any injury or death resulting from the inherent risks of skydiving, unless the skydiving operator acts grossly negligent or intentionally injures the participant.

¹⁸ As used in this analysis, the term "agritourism professional" refers to an agritourism professional, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs.

B. SECTION DIRECTORY:

Section 1: Amends s. 570.07, F.S., requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education industry certifications for farm occupations to be considered for placement on industry certification funding lists.

Section 2: Amends s. 1003.492, F.S., defining industry certification as part of career education programs; requiring the state board to adopt rules for implementing an industry certification process for farm occupations.

Section 3: Amends s. 1003.4935, F.S., conforming a cross-reference.

Section 4: Amends s. 570.961, F.S., amending a definition.

Section 5: Provides an effective date of July 1, 2014.

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:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

This bill may implicate the single subject provision in Art. III, s. 6 of the Florida Constitution, which provides that "every law enacted by the Legislature shall embrace but one subject matter and

properly connected therewith ...” The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by a court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.¹⁹ The bill is entitled “an act relating to agricultural industry certifications,” but contains a section relating to the definition of “agritourism.”

B. RULE-MAKING AUTHORITY:

The bill requires the state board to include the expertise of the Department of Agriculture and Consumer Services for implementing an industry certification process. The state board would have to amend the current industry certification process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Higher Education & Workforce Subcommittee reported HB 487 favorably as a committee substitute. There was a strike-all amendment to the bill that:

- Requires DACS, in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List.
- Provides a definition of industry certification.
- Requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process.
- Requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses

This analysis is drafted to the committee substitute as passed by the Higher Education & Workforce Subcommittee.

On March 18, 2014, the Agriculture and Natural Resources Subcommittee reported CS/HB 47 favorably as a committee substitute. There were two amendments to CS/HB 487.

The first amendment removed the words “time-limited” as used to describe the industry certification process. Many of the industry certifications on the state’s industry certification list and post-secondary industry certification list are not time limited, meaning you do not have to be recertified. The second amendment amended the definition of “agritourism activity” to include skydiving. This analysis is drafted to the committee substitute as passed by the Agriculture and Natural Resources Subcommittee.

¹⁹ *Franklin v. State*, 887 So. 2d 1063 (Fla. 2004)