

**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 1050

INTRODUCER: Senator Montford

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 10, 2015 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhvein	Becker	AG	<b>Favorable</b>
2.			AGG	
3.			AP	

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**I. Summary:**

SB 1050 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). It:

- Eliminates the competitiveness for ranking of each Agricultural Education and Promotion Facilities funding application and instead allows the department to list the applicants in alphabetical order;
- Changes the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminates the \$50 per month late charge for late recertification;
- Adds a definition for the word “vehicle” in chapter 500, F.S., in order to be consistent with the federal Food Safety Modernization Act, and adds definitions for the words “retail” and “wholesale” to clarify the types of food permits the department issues;
- Authorizes the department to sponsor “events,” in addition to breakfasts, luncheons, or dinners, in order to promote agriculture and agricultural business products;
- Authorizes the department to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests;
- Authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services;
- Authorizes the Commissioner of Agriculture to create an Office of Agriculture Technology Services;
- Authorizes the department to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority;
- Clarifies the intent of the “Fresh From Florida” marketing brand in order to avoid the misconception that the brand is indicative of inspection for food safety purposes;
- Eliminates the department’s power to adopt rules related to negotiating and entering into contracts with advertising agencies. Purchasing requirements are covered by Department of Management Services’ policies and procedures;

- Changes the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council so that a specific number of people from a particular industry are not required;
- Removes the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. This change would delete the requirement that the owner must destroy or remove the plant within 10 days;
- Eliminates the Florida Forest Service's power to dedicate its land for use by the public as a park. Florida Forest Service lands do not include any state parks and the Florida Forest Service does not manage any of its land for park purposes;
- Adds definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are programs which are authorized by federal law;
- Replaces every instance of the term "school district" with "district school board;"
- Creates a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program;
- Renames the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program;"
- Eliminates the need for dealers in agricultural products to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution; and
- Eliminates the requirement that each grain dealer report monthly to the department the value of grain it received from producers for which the producers have not received payment.

## II. Present Situation:

### **Agriculture Education and Promotion Facilities<sup>1</sup>**

The Legislature grants funding to local governments and fair associations (applicants) to pay for the planning, design, permitting, construction, or renovation of agricultural education and promotion facilities, subject to the amount provided in the General Appropriations Act. Applicants are screened by the department to determine their eligibility. Currently, the statute requires that applicants be competitively ranked based on the following criteria:

- The intended use of the funding, with priority being given to applicants proposing new facilities;
- The amount of local match, with priority given to those with the highest percentage of local match;
- The location of the facility, if it is in a brownfield, a rural enterprise zone, an agriculturally depressed area, or county that has lost its agricultural land to environmental restoration projects;

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<sup>1</sup> Information for this analysis was submitted February 26, 2015, by the Department of Agriculture and Consumer Services, in response to a request by the Senate Agriculture Committee.

- The net increase, as a result of the facility, of total available exhibition, arena, or civic center space within the jurisdictional limits of the local government in which the facility is to be located, with priority given to the largest percentage increase of total exhibition, arena, or civic center space;
- The historical record of the applicant in promoting agriculture and educating the public about agriculture;
- The highest projection of paid attendance attracted by the facility and the proposed economic impact; and
- The location of the facility with respect to an Institute of Food and Agricultural Sciences (IFAS) facility, with priority given to facilities closer in proximity to an IFAS facility.

The bill would remove the competitiveness for ranking and list the applicants in alphabetical order by applicant. The current system leaves the impression that projects will be funded in the order they are ranked, which is not always the case. This statute leaves intact the information required to be submitted to the department to certify that each applicant is a qualified agriculture and promotion facility, while still providing the Legislature the information it needs to fund the most deserving projects.

### **Limited Certification for Urban Landscape Commercial Fertilizer Application**

Section 482.1562, F.S., outlines the application requirements to receive a Limited Commercial Fertilizer Certification. Renewals are required every four years. For those who hold a limited license, recertification applications must be submitted 90-days prior to expiration of the current license. If the renewal application is not received 60 days prior to the expiration date a late fee of \$50 is assessed, in addition to the \$25 renewal fee. In order to renew a Limited Commercial Fertilizer Certificate, the cost could be as much as \$75. A new license is \$25. The bill would remove the late fee and allow certificate holders 30 days to renew their licenses. The change was requested by industry representatives, because they feel the current language is confusing. This process is consistent with other certifications under Chapter 482, F.S.

### **Powers and Duties of the Department of Agriculture and Consumer Services**

The department is empowered by the Legislature to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public. Section 570.07(20)(c), F.S., is somewhat limiting because it only refers to trade breakfasts, luncheons, and dinners for possible sponsorship opportunities. Adding the word "events" ensures that the department is covered by the types of sponsorships it would be able to provide so that it may continue to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products.

Currently, the department does not have enforcement capabilities regarding the misuse of the "Fresh From Florida" logo. The Legislature has not granted the department the authority to secure or hold a trademark. The bill would give the department the same authority as the Department of Citrus, state universities, and others to enforce the trademarks and copyrights it obtains on behalf of the state. This language clarifies the authority of the department with regard

to its ability to obtain and enforce rights in intellectual property created and utilized by the department. This authority is needed to ensure, as the “Fresh From Florida” mark becomes more popular, that the department can take immediate action to stop its misuse. Without this authority, valuable time could be lost by having to educate the Department of State, the agency currently holding this responsibility for the state, about the consequences of the misuse of the “Fresh From Florida” mark. The direct enforcement capability by the department will result in faster and more cost effective enforcement.

Currently, “providing electronic data processing and management information systems support for the department” remains a duty of the Division of Administration. The Office of Agriculture Technology Services proposes to establish the office as a stand-alone office under the supervision of a senior manager within Chapter 570, F.S. This changes would pave the way for continued implementation of the department’s information technology strategic plan.

### **Pest Control Trust Fund**

Section 482.2401, F.S. restricts the use of funds to carry out the provisions of Ch. 482, F.S. This prevents resources funded from Ch. 482, F.S., from being used to conduct work for other programs, which is problematic when functions across programs are combined within a work unit, such a licensing or inspection. Prior to the reorganization of the Division of Agriculture Environmental Services (AES), the work units were separate for each statutory area. The reorganization streamlined these units. The bill would authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (Ch. 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing and regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2018.

### **Division of Food Safety**

Section 570.50(5), F.S., authorizes the Division of Food Safety to analyze food and animal feed samples for chemical residues as required under the adulteration sections of chapters 500 and 580, F.S. The primary effect of the proposed change is to fully characterize the current actions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that would be harmful to humans or animals. Along with potential chemical adulterants, there is concern with microbiological and physical adulteration of food or feed products. These are activities that the department already performs as a service to the Divisions of Agriculture Environmental Services and Animal Industry, as well as part of FDA surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to Ch. 502, F.S., to the current statute and striking the reference to chemical residues, the department is able to fully encompass the activities performed in the Division of Food Safety labs.

### **Division of Marketing and Development**

Currently, Agriculture Dealer's licenses are issued through the Division of Marketing. The bill moves the duties associated with issuing Agriculture Dealer's Licenses to the Division of Consumer Services, which already has the same duties for several other licenses, creating better department efficiency. The Division of Marketing is currently tasked with regulating Live Stock Markets. The bill tasks responsibility of regulating Live Stock Markets to the department rather than to a specific division.

### **Florida Agricultural Promotional Campaign Advisory Council**

Section 571.28, F.S., for the membership of the Florida Agricultural Promotional Campaign Advisory Council. The membership must include six members representing agricultural producers, shippers, or packers; three members representing agricultural retailers; two members representing agricultural associations; one member representing a wholesaler of agricultural products; one member representing consumers; and one member representing the department. The bill would allow members to be selected without regard for a specific number from each category of business, but rather an overall representation of the major business components important to the business of agriculture.

### **Notice of Infection of Plants and Destruction**

Section 581.181, F.S., does not allow for discretion in determining when it is necessary to take immediate action to remove and destroy a noxious, infested or infected plant or plant product. The bill would give the department flexibility to determine if it is necessary to invoke procedures for immediate action for the cause of removal and destruction of a noxious plant, non-noxious plant, or plant product infested or infected with a pest or disease. For example, noxious plants, plant pests, or plant diseases that are well-established in Florida and are not under a department eradication or control program may not justify requiring immediate action to eliminate or otherwise mitigate.

### **School Food and Nutrition Service Program**

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes the department to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.

Schools must apply through the department and complete certain requirements prior to the operation of a school nutrition program. Once approved, the department reimburses the schools

for each lunch and breakfast meal served provided they meet established state and federal regulations.

Chapter 595, F.S., does not contain definitions for “school breakfast program,” “summer nutrition program,” or “universal school breakfast program.” The bill adds these definitions to specify that they are the programs authorized by federal law. The department administers more than one United States Department of Agriculture summer nutrition program. The bill amends the definition of “summer nutrition programs” to specify that certain requirements apply to all summer nutrition programs.

Currently, the department must make a reasonable effort to ensure that any school designated as a “severe need school” receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. Further, the department may advance funds from the school nutrition program’s annual appropriation to sponsors in order to implement the school nutrition program. There is no restriction on when or for which program the funds may be advanced. The bill would clarify that the department does not just make efforts to, but actually ensures through its processes and procedures that all eligible severe need schools receive the higher rate of reimbursement. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. It would also clarify that the department will only advance funds when requested by sponsors of the Summer Food Service Program.

### **Florida Farm to Schools Program**

Section 595.406, F.S., provides for implementation of the Florida Farm Fresh Schools Program. It was instituted in 2010 to require the Florida Department of Education to work with the department to increase the presence of Florida-grown products into schools. When the administration of the school nutrition programs was transferred to the department, this program became part of the Florida Farm to School Program, which was already being administered by the department. The bill would replace all references to the “Florida Farm Fresh Schools Program” with the “Florida Farm to School Program.” This would allow for consistent messaging and marketing around the department’s efforts as stated in the statute. Further changes would allow the department to recognize those sponsors who have purchased 10 percent of the food they serve from the Florida Farm to School Program.

### **Children’s Summer Nutrition Program**

Section 595.407, F.S., requires all school districts to develop a plan to sponsor a summer nutrition program to operate within five miles of at least one elementary school where 50 percent or more of the students are eligible for free or reduced price meals for 35 consecutive days, and also within 10 miles of each elementary school where 50 percent or more of the students are eligible for free or reduced-price meals. The bill specifies that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades K-5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to the department, interpretation of this statute has varied greatly. This

change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.

The bill remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. This allows school districts to exclude holidays and weekends.

### **Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers**

Currently, any agricultural dealer who is engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative is required to obtain a bond or certificate of deposit (CD), as required in s. 604.20(1) F.S. If a CD is the chosen form of security, the dealer is required to furnish the department the CD or a CD receipt, a bank's acknowledgement letter and an assignment of CD. The bill would eliminate the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgement that the agreement has been properly recorded.

Each grain dealer doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers have not received payment. Each grain dealer must report to the department monthly the value of grain it received from producers for which the producers have not received payment. This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers. The bill eliminates the requirement that each grain dealer report monthly to the department, as only three of the four licensed dealers are required to do so. The dealers would still continue to be licensed and bonded which would allow the department to request information from dealers in the event of a complaint or suspected malpractice.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 288.1175, F.S., to eliminate the requirement that the Department of Agriculture and Consumer Services competitively rank each application for funding of agriculture education and promotion facilities.

**Section 2** amends s. 482.1562, F.S., to change the deadline for submitting a recertification application for a current limited certification for urban landscape commercial fertilizer application. The bill requires the application to be submitted four years after the date of issuance. It eliminates the \$50 per month late charge for late recertification.

**Section 3** amends s. 500.03, F.S., to include a definition for the word "vehicle" in order to be consistent with the federal Food Safety Modernization Act. It also adds definitions for the words "retail" and "wholesale" to clarify the types of food permits that the department issues.

**Section 4** amends s. 570.07, F.S., to authorize the department to sponsor “events,” in addition to trade breakfasts, luncheons, and dinners, to promote agriculture and agricultural business products. It also authorizes the department to secure letters of patent, copyrights, and trademarks on any work product of the department and accordingly to enforce its rights.

**Section 5** amends s. 570.30, F.S., to remove electronic data processing and management information systems support as a duty for the department’s Division of Administration.

**Section 6** amends s. 570.441, F.S., to authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services. This subsection expires June 30, 2018.

**Section 7** amends s. 570.50, F.S., to fully characterize the current functions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that would be harmful to humans or animals. Along with potential chemical adulterants, there is concern with microbiological and physical adulteration of food or feed products. These are activities that the division already performs for other divisions, as well as part of FDA surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to Ch. 502, F.S., the department would be able to fully encompass the activities performed in the Division of Food Safety labs.

**Section 8** amends s. 570.53, F.S., to remove enforcement of provisions relating to dealers in agricultural products from the duties of the Division of Marketing and Development. The Division of Marketing is currently tasked with regulating Live Stock Markets.

**Section 9** amends s. 570.544, F.S., to move issuance of Agriculture Dealer’s Licenses from the Division of Marketing and Development to the Division of Consumer Services, which already issues several other licenses. It also requires the department, rather than a specific division, to regulate Live Stock Markets

**Section 10** creates s. 570.68, F.S., to create the Office of Agriculture Technology Services to provide electronic data processing and agency information technology services to the department.

**Section 11** amends s. 570.681, F.S., to clarify legislative findings with regard to the Florida Agriculture Center and Horse Park.

**Section 12** amends s. 570.685, F.S., to authorize the department to provide staff and meeting space for the Florida Agriculture Center and Horse Park Authority.

**Section 13** amends s. 571.24, F.S., to clarify the intent of the Florida Agricultural Promotional Campaign as a marketing program. It removes an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council.



**Section 14** amends s. 571.27, F.S., to remove obsolete provisions relating to the department's authority to adopt rules related to negotiating and entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign.

**Section 15** amends s. 571.28, F.S., to change the membership criteria for the Florida Agricultural Promotional Campaign Advisory Council, so that a specific number of people from a particular industry are not required.

**Section 16** amends s. 581.181, F.S., to remove the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. With this change, the owner would not be required to destroy or remove the plant within 10 days.

**Section 17** repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. The bill repeals this section because the Florida Forest Service does not acquire or have lands for "park purposes." The department acquires forest land for multi-use purposes.

**Section 18** amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that these programs are authorized by federal law.

**Section 19** amends s. 595.404, F.S., to clarify requirements for the School Nutrition Program. It creates a duty for each school district to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. It specifies that funds from the school nutritional program may only be advanced to the sponsors of Summer Food Service Programs. It also requires the department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs.

**Section 20** amends s. 595.405, to replace every instance of the term "school district" with "district school board." It rewrites the provisions of this section, which specifies that each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. It also provides criteria for when a universal school breakfast program must be provided. The reorganizing of the section combines several subsections and removes conflicting and duplicative clauses, so that the section is easier to read, interpret, and apply.

**Section 21** amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." It also authorizes the department to recognize sponsors who purchase at least ten percent of the food they serve from the Florida Farm to School Program.

**Section 22** amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades kindergarten through 5, not just elementary schools. It removes the requirement that each school

district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends.

**Section 23** amends s. 595.408, F.S., to change every instance of the word “commodity” to “food” to be consistent with the federal statutes.

**Section 24** amends s. 595.501, F.S., to require sponsors to complete corrective action plans, required by the department or a federal agency, so that they are in compliance with school food and nutrition service programs. This amendment would remove the requirements for corrective action plans from s. 595.405, F.S., and place them within this section.

**Section 25** amends s. 595.601, F.S., to correct a cross-reference.

**Section 26** amends s. 604.20, F.S., to remove a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution.

**Section 27** amends s. 604.33, F.S., to remove provisions requiring grain dealers to submit monthly reports. It authorizes rather than requires the department to make at least one spot check annually of each grain dealer.

**Section 28** provides that this act shall take effect July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

See Private Sector Impact Section.

**B. Private Sector Impact:**

The bill would eliminate a late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on persons who apply commercial fertilizer by eliminating a fee.

The bill would eliminate certain financial assurance and licensing requirements for dealers in agricultural products and for grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The bill would create an exemption from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated by the department. This may have a positive impact on those who own the plant or plant products infested with pests or noxious weeds by not requiring the owners to destroy them.

**C. Government Sector Impact:**

The bill appears to have an insignificant negative impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. The department indicates that it expects the impact to be minimal and that the loss will be absorbed by the Division of Agricultural and Environmental Services.

The bill does have a fiscal impact associated with the creation of s. 570.68, F.S., which creates the Office of Agriculture Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state does contribute a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 3.80%, while the contribution rate for an ineligible employee in a senior management class is 16.30%. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of \$11,795 from the Salary and Benefits appropriation category.

If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.37%. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.14% and result in \$12,994 in additional state retirement contributions.

In either scenario, the department would manage these additional costs within existing salary and benefit appropriations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 482.1562, 500.03, 570.07, 570.30, 570.441, 570.50, 570.53, 570.544, 570.681, 570.685, 571.24, 571.27, 571.28, 581.181, 595.402, 595.404, 595.405, 595.406, 595.407, 595.408, 595.501, 595.601, 604.20, and 604.33.

This bill creates the following section of the Florida Statutes: 570.68.

This bill repeals the following section of the Florida Statutes: 589.26.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.