



The Florida Senate

Interim Project Report 2002-102

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Committee on Agriculture and Consumer Services

Senator Steven A. Geller, Chairman

REVIEW OF A PROPOSAL TO ELIMINATE THE DEPARTMENT OF CITRUS AS A STATE AGENCY

SUMMARY

The Florida Citrus Commission was created by the Legislature in 1935. The Commission has 12 members who are required to be actively engaged in the state's citrus industry for at least the five years immediately preceding their appointment by the Governor and confirmation by the Senate. In 1949 the Department of Citrus was legislatively created as a body corporate with headquarters in Lakeland. The department functions as the day-to-day administrator of policies set forth by the Commission.

Chapter 601, F.S., cited as "The Florida Citrus Code of 1949," provides legislative authority and guidance to the activities of both the Commission and the department. The purpose of the department is to protect the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. The responsibilities of the department include establishing minimum maturity and quality standards for citrus fruits; regulating the methods and practices used in harvesting, grading, packing, and processing citrus fruits; researching advertising campaigns; and promoting citrus fruits.

The Citrus Commission sets an annual excise tax or "box tax" that growers must pay to fund department operations. Funds collected under the excise tax (and other miscellaneous amounts) are assessed a service charge of 3.3 percent. This surcharge on the department's revenues pays for central state government administrative functions such as payroll, computer services, insurance and retirement benefits.

Periodically the Florida Citrus Commission and industry associations and individuals consider the possibility of transferring the Department of Citrus from an executive agency to some other form of organizational entity. In 1996 the Commission appointed a Blue Ribbon Committee to explore whether it would be beneficial to the citrus industry to

"privatize" the department. At that time, the state was experiencing a difficult financial period and the committee was concerned that there might not be adequate general revenue funds to meet other critical state needs such as education, transportation, correctional facilities and health care programs, raising the possibility that citrus marketing trust fund monies could be diverted to other activities. Recently, an organizational change of the department has been reconsidered. During the 2001 Legislative Session an amendment was adopted on second reading by the House of Representatives which would have changed the Department of Citrus to the Florida Citrus Authority, establishing the authority as an independent special district covering 39 counties. Since the 2001 Legislative Session adjourned on May 5, there has been significant interest in the citrus industry as to whether the current Department of Citrus should be retained or eliminated and a Florida Citrus Authority created. Discussion has been dynamic within the industry; as the summer came to a close; "Draft Number 7" was the working document in circulation.

The 12 members of the Florida Citrus Commission would continue to be appointed by the Governor and confirmed by the Senate under the authority proposal. The "Authority" would function as a public body corporate, politic, and instrumentality of the state under the supervision of the Florida Citrus Commission and the duties and responsibilities of both the Commission and the authority would be similar to those currently exercised under the present organizational structure. However, there are some inherent differences between a state agency and an independent special district as they relate to legislative oversight.

While over 60 independent multi-county special districts operate in Florida, such as Spaceport Florida Authority, Reedy Creek Improvement District, and the various water management districts, the creation of the Florida Citrus Authority would constitute the special

district operating in the most counties. While such a fundamental change can be statutorily addressed, it is less clear what would be accomplished in the day-to-day operations within the industry or the department. Neither retaining the present department structure nor recreating it as an authority assures that a subsequent legislature would not deem it appropriate to pass by way of a general bill, appropriations act, or implementing bill language to notwithstanding the provisions of specific sections of law and require funding of an issue such as pest or disease eradication by way of a special assessment.

Evolution and modernization within the industry has taken place since Florida established itself as a major factor in world citrus production and marketing. It is appropriate for the legislature to monitor the activities of this vital industry and sustain its continued well-being. It is recommended that the legislature continue to monitor this issue, require additional information from the industry as to their desire as pre-session committee meetings are held, and ultimately satisfy itself as a legislative body as to the merit of the proposal.

BACKGROUND

The Florida Citrus Commission was created by the Legislature in 1935. The Commission has 12 members who are required to be actively engaged in the state's citrus industry for at least the five years immediately preceding their appointment by the Governor and confirmation by the Senate. In 1949 the Department of Citrus was legislatively created as a body corporate with headquarters in Lakeland. The department functions as the day-to-day administrator of policies set forth by the Commission.

Chapter 601, F.S., cited as "The Florida Citrus Code of 1949," provides legislative authority and guidance to the activities of both the Commission and the department. The purpose of the department is to protect the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. The responsibilities of the department include establishing minimum maturity and quality standards for citrus fruits; regulating the methods and practices used in harvesting, grading, packing, and processing citrus fruits; researching advertising campaigns; and promoting citrus fruits. The Citrus Commission sets an annual excise tax or "box tax" that growers must pay to fund department operations. The annual excise tax as assessed over the most recent three

years are: FY 1998-99; \$54.1 million; FY 1999-2000, \$64.8 million; and FY 2000-2001, \$59.7 million. Under the general provisions of Chapter 215, F.S., relating to financial matters, funds collected under the excise tax (and other miscellaneous amounts) are assessed a service charge of 3.3 percent; in the budget year FY 2000-2001 that assessment was \$2 million. This surcharge on the department's revenues pays for central state government administrative functions such as payroll, computer services, insurance and retirement benefits. Under an authority, that surcharge obligation would probably not be required, nor would the state necessarily be responsible to provide administrative support.

Periodically the Florida Citrus Commission and industry associations and individuals consider the possibility of transferring the Department of Citrus from an executive agency to some other form of organizational entity. In 1996 the Commission appointed a Blue Ribbon Committee to explore whether it would be beneficial to the citrus industry to "privatize" the department. The committee's task was to study alternatives to the current organizational structure of the department which would ensure that the Citrus Advertising Trust Fund would be used only for those purposes authorized under "The Florida Citrus Code" (Chapter 601, F.S.). At that time, the state was experiencing a difficult financial period and the committee was concerned that there might not be adequate general revenue funds to meet other critical state needs such as education, transportation, correctional facilities and health care programs, raising the possibility that citrus marketing trust fund monies could be diverted to other activities. The committee was also concerned about the state's transition toward an increasingly urban citizenry and the impact that the urbanization could have on "elected officials in Tallahassee." The committee determined that certain goals would have to be met if the industry was going to make a change from a department to another organizational entity. The new structure:

1. Must have the authority to promote;
2. Must have the authority to regulate;
3. Must have the authority to conduct research;
4. Must have the authority to tax;
5. Must provide for retention of the Florida Citrus Commission; and

6. Saving the general revenue service charge funds was recognized as an additional benefit.

The department staff conducted a study and outlined options for the committee. It was determined that an "Independent District" was the best option for consideration under a possible restructure plan. The committee decided that it would not be beneficial to lose the status of being an executive agency of state government. Additionally, the committee determined that there was not a way to completely insulate the Citrus Advertising Trust Fund. The Joint Citrus Industry Legislative Committee (JCILC) did not support the restructuring concept and the issue was not pursued.

Recently, an organizational change of the department has been reconsidered. During the 2001 Legislative Session an amendment was adopted on second reading by the House of Representatives which would have changed the Department of Citrus to the Florida Citrus Authority, establishing the authority as an independent special district composed of three subdistricts covering 39 counties.

Since the 2001 Legislative Session adjourned on May 5, there has been significant interest in the citrus industry as to whether the current Department of Citrus should be retained or eliminated and a Florida Citrus Authority created. A part of the discussion within the industry is a determination of how narrow or how broad any proposal should be in terms of the number of issues the industry would like the Legislature to address. Discussion has been dynamic within the industry; as the summer came to a close, "DRAFT NUMBER 7" was the working document in circulation.

METHODOLOGY

Interviews were conducted in person and by telephone with agency staff and interested parties in the private sector for the purpose of gaining a better understanding of issues related to the amendment, as well as specific budgetary matters pertaining to the proposal. Public meetings were attended and minutes of additional pertinent meetings were requested for review. Inasmuch as the issue continues to be ongoing and dynamic at this time, a survey of the member organizations of the Joint Citrus Industry Legislative Committee was not undertaken prior to the submission of the report.

FINDINGS

The amendment to House Bill 1915 as adopted by the House of Representatives on second reading, 2001 Session, would have eliminated the Department of Citrus and created "The Florida Citrus Authority" as an independent special district under the supervision of the Florida Citrus Commission, with the existing three subdistricts. The 12 members of the Florida Citrus Commission would continue to be appointed by the Governor and confirmed by the Senate under the authority proposal. The authority would function as a public body corporate, politic, and instrumentality of the state under the supervision of the Florida Citrus Commission and the duties and responsibilities of both the Commission and the authority would be similar to those currently exercised under the present organizational structure as outlined under Chapter 601, F.S. However, there are some inherent differences between a state agency and an independent special district as they relate to legislative oversight. Section 11(a)(21), Article III, of the Florida Constitution, prohibits special laws or general laws of local application pertaining to the creation of independent special districts unless certain specified criteria are met.

Those minimum requirements, which must be in the charter, include the purpose, powers, functions and duties regarding taxation; organization of the governing board; financial disclosure and reporting requirements; procedures for issuing bonds, holding elections, and financing; method of collecting non ad valorem assessments; planning requirements; and geographic boundary limitations.

Characteristically independent special districts may cover more than one county. Using the water management districts as a model and recognizing that they are part of a statewide plan (for water conservation), the legislature is not prohibited from creating special districts and authorizing those districts to operate from the levy of taxes. Water management districts are in some respects like state agencies and in other respects more like local governments. Employees of the water management districts are members of the State Retirement System, but their employees are not subject to the regulations of the State Career Service System. Sometimes the districts assist in implementing state programs and sometimes they create and implement programs created by their governing boards.

There are examples of this dichotomy relating to water management districts which probably would apply as well to the creation of a citrus authority. Under the water management district system, the board of executive directors is appointed by the Governor and is

subject to confirmation by the Senate, and the rate at which taxes can be levied is subject to approval by the Legislature.

The authorized purpose of the new authority would be the same as it now exists under the department, i.e., advertising, marketing and research for citrus products.

The newly created authority would be enabled to collect special district funds through non ad valorem taxation but would not be subject to certain provisions regarding planning requirements, financial allocations, elections, public facilities reports, and local government comprehensive plans. The authority would not be subject to legislative appropriation, and none of its revenue would go into the General Revenue Fund. Specific language in the amendment prohibits authority funds from being used for the purpose of citrus canker eradication or other pest infestations. The authority would assess and collect taxes to perform its objectives, with a fiscal year of October 1 through September 30. The method of adoption of the authority budget is detailed and, upon adoption, becomes an operating and fiscal guide to the authority.

All lawsuits filed against the authority are required to be filed in Polk County, headquarters of the organization. The authority is granted power to appoint the members of the Florida Citrus Commission to serve as hearing officers regarding rulings and decisions of the authority and to collect dues and contributions for certain not-for-profit corporations. It is unclear how the funds are to be deposited or accounted for or if there is to be any service fee for the collection. However, no funds, including service fee charges of the authority, would be deposited in the General Revenue Fund. The amendment deletes a requirement that citrus inspectors must be licensed by the United States Department of Agriculture. The amendment also provides for the advertising of cattle feed, and the promotion of its use.

While over 60 independent multi-county special districts operate in Florida, such as Spaceport Florida Authority, Reedy Creek Improvement District, and the various water management districts, the creation of the Florida Citrus Authority would constitute the special district operating in the most counties.

RECOMMENDATIONS

The Legislature created the Florida Citrus Commission in 1935 and subsequently created the Florida Department of Citrus in 1949 at the request of the Florida citrus industry. It is an arrangement that has

worked well over the years, providing the industry with a forum at which the various and disparate interests such as growers, fruit packers, and fruit processors can come together to address their concerns among themselves and to determine their own destiny.

Chapter 601, F.S., “The Florida Citrus Code of 1949” has provided statutory protection to those whose livelihood depend on the success of the industry as to specifications for minimum fruit maturity standards, grading of fresh fruit, licensing of citrus fruit dealers, and providing for advertising campaigns with funds accruing from the citrus excise tax.

Over the years the citrus industry has come before the legislature with requests for statutory changes and those changes have generally been adopted, enabling the industry to remain viable. Among the issues addressed periodically is that of a statutory structural change such as that contemplated in a switch to an independent special district.

Such a change is allowed under both the Florida Constitution and the Florida Statutes. While such a fundamental change can be statutorily addressed, it is less clear what would be accomplished in the day-to-day operations within the industry or the department. If the change is for the purpose of avoiding a service charge to the state (3.3%), that could be more simply addressed by deleting the requirement from the statute.

If the change is made for protection of the Citrus Advertising Trust Fund from undesired expenditures, that could be more simply addressed by placing specific language pertaining to the matter in statute. Neither retaining the present department structure nor recreating it as an authority assures that a subsequent legislature would not deem it appropriate to pass by way of a general bill, appropriations act, or implementing bill language to notwithstanding the provisions of specific sections of law and require funding of an issue such as pest or disease eradication by way of a special assessment.

Evolution and modernization within the industry has taken place since Florida established itself as a major factor in world citrus production and marketing. It is appropriate for the legislature to monitor the activities of this vital industry and sustain its continued well-being.

The proposal of the 2001 Legislative Session to eliminate the Department of Citrus as a state agency is now under discussion in its seventh draft confirming the interest of those with a stake in the matter. At the

time of the writing of this report there is apprehension within the citrus industry as to the correctness of moving forward with this matter. A cautious approach appears to be the path embarked upon by the member organizations of the Joint Citrus Industry Legislative Committee as the legislature convenes to hold Fall committee meetings. It is recommended that the legislature continue to monitor this issue and require additional information from the industry as to their desire as pre-session committee meetings are held and ultimately satisfy itself as a legislative body as to the merit of the proposal.