

STORAGE NAME: h1915.ag.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1915 (PCB AG 01-01)
RELATING TO: Agriculture & Consumer Services
SPONSOR(S): Committee on Agriculture & Consumer Affairs and Representative Spratt
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1915 addresses a variety of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (department).

The legislation waives civil liability to the Division of Forestry when equipment, vehicles, or supplies are leased to state, county, or local governmental entities having fire/rescue responsibilities.

Within the Division of Food Safety, the legislation authorizes the department to raise the fee cap for a food permit from \$350 to \$1000, and states the fee must be used solely for recovering costs for the services provided. The department is also allowed to recover the cost of re-inspection of food establishments to verify compliance.

Within the Division of Dairy, the legislation prohibits the transfer of licenses for frozen dessert plants, providing for suspension, revocation, and penalties. The bill also authorizes, in an emergency situation, the sale of reconstituted pasteurized milk products that are appropriately labeled, as well as revising references relating to the pasteurized milk ordinance and milk sanitation.

Within the Division of Animal Industry, the bill provides for the humane care and treatment of livestock in the state through the adoption of best management practices. It also provides for the development of acceptable humane euthanasia methods for killing livestock. The bill authorizes the department to suspend or revoke veterinary accreditation for certain unauthorized or unethical practices.

Within the Division of Agricultural Environmental Services, the department is authorized to verify data supporting label claims of termite prevention or protection on pesticide products registered in the state. In addition, the department is given rulemaking authority for specifying performance standards and acceptable test conditions for reviewing data submitted in support of an efficacy claim. The bill also enforces the labeling requirements of the Federal Food and Drug Administration and ensures that "mad cow" and other contagious diseases are not introduced into the feed supply.

In addition, the bill modifies the Agricultural Economic Development Program to be less restrictive, exempts two types of rides from the department's amusement ride inspection program, and revises the composition of the Animal Industry Technical Council to include representation of other emerging animal industries, such as alligators and ostriches. The bill includes various other changes, all of which are explained in detail in Part D (section-by-section analysis) of the analysis.

The fiscal impact of this legislation is minimal.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Lower Taxes: The bill provides for an increase in the fee cap for food permits, as well as allows the department to charge a fee to cover the cost of re-inspection of food establishments.

B. PRESENT SITUATION:

Division of Administration:

Currently, the Division of Consumer Services has the authority to investigate and bring action under Chapter 501, F.S., Unfair and Deceptive Trade Practices, to enjoin an act or practice, or sale of a product or service, to seek relief on behalf of consumers for violation of laws relating to consumer protection.

Agricultural Marketing Orders are currently excluded from rulemaking requirements of Chapter 120, F.S.

Division of Agricultural Environmental Services:

Presently in the state, there are approximately 50 registrations for pesticide products labeled for the control of subterranean termites and available for use in new construction. All of these products include statements attesting to use for protection against subterranean termite infestation. With a few exceptions, these products have been registered for use without being evaluated against an efficacy standard that would provide reasonable assurance that the products are effective in preventing damage or infestation by subterranean termites at the application rates and in the manner of use specified on the label. Without adequate assurance of efficacy, Florida consumers may not be sufficiently protected from economic harm from termite damage.

Division of Animal Industry:

Currently, the Animal Industry Technical Council has 11 members representing traditional animal industry groups.

At this time, with approval from the State, the United States Department of Agriculture (USDA) accredits licensed veterinarians to perform certain services as representatives of both state and federal offices. Once the licensed veterinarian obtains the accreditation only the USDA has the authority to revoke or suspend accreditation privileges. Therefore, if violations or unethical practices occur on non-federal recognized activities the only recourse the state has is to fine the veterinarian rather than have accreditation privileges suspended or revoked.

In regards to calf vaccination, existing statutory language does not correspond with the federal language. And, currently there exists no uniform standards for humane care, treatment, or euthanasia of livestock animals.

Division of Dairy:

Presently, in an emergency, the department may authorize the sale of pasteurized milk and milk products that have not been graded and are so labeled. Also, current statute does not prohibit the transfer of licenses for frozen dessert plants.

Division of Food Safety:

Currently, all food establishments in the same category pay the same permit fee, regardless of the number of times they're inspected. To ensure the safety of consumers, the goal of the department is to inspect each food establishment at least 2-3 times per year. For establishments that fail the initial inspection, the department re-inspects in 2-3 weeks to verify compliance. Unfortunately, it sometimes takes 2-4 follow-up visits to achieve compliance. These establishments require a greater amount of program resources as compared to the establishments in compliance, but pay the same permit fee.

Since 1995, the number of food establishments the Bureau of Food and Meat Inspection (bureau) inspects has doubled. Currently, the bureau inspects roughly 39,000 establishments a year. Since the fee of \$350 was set in 1992, the environment of the industry has vastly changed. The popularity of large supermarkets with specialty departments, such as bakeries, delis, and sushi bars, coupled with the increase in convenience stores with food service has changed the workload and responsibilities of the inspectors in this program. In addition, the size of supermarkets has overshadowed the size of convenience stores making the fee requirement inequitable.

Division of Forestry:

The department has authority to loan new or used equipment, vehicles or supplies to state, county and local governmental entities, which have fire/rescue responsibilities. However, the threat of liability causes serviceable items to be destroyed or scrapped rather than provided to needy organizations.

Division of Marketing:

Presently, the department is required to coordinate the development of uniform specifications for use and procurement of compost by state agencies, establish a work group of state and local government personnel to design an appropriate mechanism and report annually to the Governor, Senate President, and Speaker of the House, the sale and use of compost by state agencies. The department has developed uniform specifications for compost that has been applied to qualify compost vendors for State Negotiated Agreement Price Schedule (SNAPS). However, since not all vendors apply for SNAPS agreements, reporting is not accurate.

In 2000, the Legislature appropriated \$3 million to fund an agricultural emergency loan program. However, during implementation of the program it was found the current language is too restrictive to prove effective.

Division of Plant Industry:

Currently the department has no recourse for persons who violate rules imposed by the department under Chapter 581, F.S., the Plant Industry Chapter.

Division of Standards:

Two new types of vehicles that fall under the department's amusement ride inspection program have been appearing in the state. Battery-powered miniature cars, which are operated and ridden by small children, can be purchased at retail or rented at an event where a small track or area is

laid out for the children to ride on. The second ride, a trackless vehicle, uses a riding mower or golf cart to pull several trailers or carts with passengers at walking speed. The trackless vehicles are not confined to a track, but are driven by an operator. Although both types of vehicles can arguably be classified as amusement rides, according to the department, they are relatively safe and present little opportunity for injury.

Office of Agricultural Water Policy:

Currently, the decisions for the distribution of Best Management Practices (BMPs) funding are being made collectively between the department and the Department of Environmental Protection (DEP). There is no rule-making authority in place.

C. EFFECT OF PROPOSED CHANGES:

Division of Administration:

The bill proposes to exclude LP Gas Marketing Orders from rulemaking requirements. The bill would also strengthen the department's ability to protect consumers.

In addition, the department is given authority for repair, renovation, or construction within its existing infrastructure. Unlike most state agencies, the department actually owns hundreds of buildings and is often faced with unforeseen capital improvement requirements. These facilities are, in many cases, aging and require upkeep directly by the department. Because of the prohibition of initiating fixed capital projects unless specifically appropriated by the Legislature, the department is often limited or restricted in making appropriate repairs, renovations or required construction at its facilities. This new authority, limited to \$250,000 per structure, would resolve those problems.

Division of Agricultural Environmental Services:

The bill empowers the department to verify data supporting label claims of termite prevention or protection on pesticide products registered in the state. It gives the department rulemaking authority for specifying performance standards and acceptable test conditions for reviewing data submitted in support of an efficacy claim.

Division of Animal Industry:

The bill proposes to add three additional at-large members, appointed by the Commissioner of Agriculture and Consumer Services, representing the new and emerging animal industries in the state, such as ostriches, emus, alligators, etc., to the Animal Industry Technical Council.

The bill gives the department the authority to suspend or revoke the accreditation of licensed veterinarians for certain unauthorized or unethical practices. The bill also cleans up existing language relating to calf vaccination requirements to conform to the federal language.

The bill allows for the humane care and treatment of livestock in Florida to be established by the department through the adoption of BMPs. The bill also revises provisions relating to the humane slaughter and euthanasia of livestock.

Division of Dairy:

The bill allows the department to authorize the sale of reconstituted pasteurized milk products, which have not been graded and are appropriately labeled, during an emergency. It prohibits the transfer of licenses for frozen dessert plants, providing penalties for violation. It also provides for the adoption of various dairy-related documents by rule, to coincide with revisions at the federal level.

Division of Food Safety:

The bill allows the department to charge a fee to cover the cost of re-inspection when conducted to verify compliance. A re-inspection fee may be used as a catalyst for the food establishment to achieve compliance on the initial inspection or to come into compliance upon the first re-inspection.

The bill increases the fee cap the department may charge for a food permit from \$350 to \$1000. The fee increase is necessary due to the increased number of food establishments to be inspected, as well as the time and cost required for the inspection process. Food establishment inspectors currently spend about three full workdays inspecting the average supermarket each year as compared with about six hours per year inspecting convenience stores with food service. The increase in the fee cap will enable the department to make the fee structure for inspection more equitable between the various types of food establishments.

Division of Forestry:

The bill provides protection from civil liability to the department and other private or public entities when equipment, vehicles, or supplies are donated to state, county, or local governmental entities having fire/rescue responsibilities.

Division of Marketing:

The bill relieves the department of the reporting requirement regarding the sales and use of compost by state agencies. The bill also expands the provisions of the Agricultural Economic Development Program to include a grant program to assist agribusinesses in market development, as well as revising eligibility requirements and loan application procedures.

Division of Plant Industry:

The bill authorizes the department to levy penalties for violations of rules adopted under Chapter 581, F.S.

Division of Standards:

The bill exempts battery-powered miniature cars and trackless vehicles from amusement ride inspection. According to the department, both are relatively safe and present little opportunity for injury. In addition to being a low risk activity, these types of rides are difficult to track and locate, and are becoming very common, thus making it difficult for inspection by the department.

Office of Agricultural Water Policy:

The bill establishes rulemaking authority between the department and DEP for decisions relating to distribution of BMP funding.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 120.80, F.S., excluding LP Gas Marketing Orders from rulemaking requirements.

Section 2: Amends s. 125.27, F.S., providing protection from civil liability for the department and other private or public entities who lease, loan, or make available equipment, vehicles, or supplies to state, county, or local governmental entities having fire/rescue responsibilities.

Section 3: Amends s. 201.15, F.S., providing rule-making authority regarding the distribution of funds for implementation of best management practices to the department and the Department of Environmental Protection.

Section 4: Amends s. 316.228, F.S., providing for multiple strobe lamps, when necessary, to meet visibility requirements; requiring red flag to mark projecting load.

Section 5: Amends s. 328.08, F.S., clarifying uses of motor vehicle known as a “goat.”

Section 6: Amends s. 403.714, F.S., relieving the department of the reporting requirement regarding the sales and use of compost by state agencies.

Section 7: Amends s. 487.041, F.S., authorizing the department to verify data supporting label claims of termite prevention or protection on pesticide products registered in the state; providing rule-making authority for specifying performance standards and acceptable test conditions for reviewing data submitted in support of an efficacy claim.

Section 8: Amends s. 500.09, F.S., allowing the department to establish fees to recover the costs of re-inspection of food establishments when conducted for the purpose of verifying compliance with Chapter 500.

Section 9: Amends s. 500.12, F.S., increasing the fee cap the department may charge for a food permit from \$350 to \$1000.

Section 10: Amends s. 502.012, F.S., amending the designation of pasteurized milk ordinance; allowing the department to adopt said ordinance by rules.

Section 11: Amends s. 502.014, F.S., allowing the department to adopt, by rule, publications used for certification of employees as state milk sanitation officers; deleting requirement for persons receiving federal marketing permit for milk and milk products to forward a copy of said certificate to the department.

Section 12: Amends s. 502.053, F.S., clarifying publications referenced for milk testing.

Section 13: Amends s. 502.091, F.S., authorizing the sale of reconstituted pasteurized milk products, when appropriately labeled as determined by the department.

Section 14: Amends s. 503.041, F.S., providing for suspension or revocation of a transferred frozen dessert license.

Section 15: Amends s. 570.07, F.S., authorizing the department to repair, renovate, or construct within its existing infrastructure; providing a cap of \$250,000 per structure; empowering the department to commence legal proceedings in circuit court when a violation relating to consumer protection has occurred.

Section 16: Amends s. 503.071, F.S., cross-referencing Chapter 500, as it relates to embargoing, detaining, or destroying food or food processing equipment.

Section 17: Amends s. 570.244, F.S., clarifying the department shall facilitate economic growth through development of all agribusinesses.

Section 18: Amends s. 570.249, F.S., expanding the Agricultural Economic Development Program to include grants and aid; clarifying eligible crops to include seafood and aquaculture, including shellfish cultivation and harvesting and commercial fishing; clarifying loan application must be made to the department within 90 days after natural disaster or socioeconomic condition occurs; modifying amounts and conditions of net worth; providing for loans to be secured; and, providing the department establish a grant program to provide aid to agribusinesses to assist in market development.

Section 19: Amends s. 570.38, F.S., modifying the composition of the Animal Industry Technical Council to include three at-large members representing other animal industries, such as alligator, ostrich, emus, etc., in the state.

Section 20: Amends s. 580.051, F.S., requiring commercial feed distributed in the state to be labeled in accordance with the United States Food and Drug Administration.

Section 21: Amends s. 580.065, F.S., modifying testing criteria for laboratory certification.

Section 22: Amends s. 580.091, F.S., modifying sampling requirements for feed ingredients.

Section 23: Amends s. 580.112, F.S., prohibiting distribution of feed or feedstuff prohibited by federal law or regulation.

Section 24: Amends s. 581.211, F.S., authorizing the department to levy penalties for violations of rules adopted under said chapter.

Section 25: Amends s. 585.002, F.S., limiting local government regulation with respect to the humane care and treatment of livestock and poultry when such activity is regulated through best management practices developed or adopted by the department under Chapter 120 as part of a statewide or regional program.

Section 26: Amends s. 585.145, F.S., requiring official certificates of veterinary inspection only be completed by veterinarians accredited under the National Veterinary Accreditation Program; authorizing the department to deny authority to issue said certificates for just cause.

Section 27: Amends s. 585.155, F.S., revising vaccination requirements for calves.

Section 28: Amends s. 616.242, F.S., exempting battery-powered cars or vehicles designed to be operated by children 7 years of age or under and that do not exceed a speed of 4 mph; exempting mechanically-driven vehicles that pull train cars, carts, wagons, or similar vehicles, that are not confined to a track or an area but are steered by an operator and do not exceed a speed of 4 mph.

Section 29: Amends s. 633.557, F.S., authorizing the department to adopt by rule exceptions to nonresidential farm buildings exemptions to protect the public health, safety, and welfare.

Section 30: Amends s. 828.22, F.S., creating the Humane Slaughter Act; revising provisions relating to humane slaughter and livestock euthanasia.

Section 31: Amends s. 828.23, F.S., revising definitions.

Section 32: Amends s. 828.24, F.S., providing only humane methods be used in the slaughter of livestock; providing animal be rendered insensitive to pain prior to being shackled or hoisted with intent to kill; and, reiterates said section does not override authority of s. 828.12, F.S.

Section 33: Amends s. 828.25, F.S., revising provisions of administration; authorizing the department to conduct inspections of premises of slaughterers at random intervals.

Section 34: Amends s. 828.251, F.S., requiring the department, and others, to make current technical information available to slaughterers.

Section 35: Amends s. 828.252, F.S., providing for humane care of non-ambulatory animals.

Section 36: Amends s. 828.26, F.S., providing administrative fine of up to \$10,000 for violations of provisions or rules of said sections; providing violations of said sections result in a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine of \$500; and, reiterates said section does not override authority of s. 828.12, F.S.

Section 37: Amends s. 427.804, F.S., providing cross-reference to s. 570.07, F.S.

Section 38: Amends s. 559.921, F.S., providing cross-reference to s. 570.07, F.S.

Section 39: Amends s. 570.544, F.S., repealing subsections (10) and (11).

Section 40: Providing an effective date of July 1, 2001, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

	Fund	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)	Amount Year 3 (FY 03-04)
1. <u>Revenues:</u>				
Recurring Revenues:				
Fair ride inspections	GITF*	\$ (4,200)	\$ (4,620)	\$ (5,082)
Food inspection program	GITF	<u>800,400</u>	<u>840,420</u>	<u>882,441</u>
Total Recurring Revenues		796,200	835,800	877,359
2. <u>Expenditures:</u>				
Operating Costs:				
Recurring:				
Expenses – Animal Industry Technical Council per diem & travel	GR**	\$ 2,250	\$ 2,250	\$ 2,250
AITC printing & mailing costs (Change of notification)	GR	3,000	3,000	3,000
AITC rule development & Information distribution	GR	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
Total Recurring Operating Costs		10,250	10,250	10,250
Non-Operating Costs:				
General revenue service charge @ 7.3% of revenue	GITF	<u>58,123</u>	<u>61,013</u>	<u>64,047</u>
Total Non-Operating Costs		59,123	61,013	64,047
Grand Total of Costs (All funds)		\$ 68,373	\$ 71,263	\$ 74,297
Grand Total of Revenues (All funds)		\$796,200	\$835,800	\$877,359

*General Inspection Trust Fund

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**General Revenue

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Food Inspection Program:

In order to maintain a reasonable relationship between fee amounts and costs for services provided, some food establishments will be required to pay an increased amount for an annual food permit fee. This amount will be set by rule and the largest, most complex establishments would have the greatest increases. The maximum amount of increase at the present time is anticipated to be \$300, but future increases are possible if costs of services increase. Some establishments could even pay a reduced amount in the future, based on the costs for services.

Food establishments that require re-inspection to verify compliance with law or rule will be charged with the cost of that re-inspection.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

Section 201.15(8), F.S., gives the Department of Agriculture and Consumer Services (department) and the Department of Environmental Protection (DEP) rulemaking authority regarding the distribution of funds for implementation of best management practices.

Section 487.041(4)(e), F.S., gives the department rulemaking authority to specify performance standards and acceptable test conditions for data submitted in support of an efficacy claim relating to termite prevention or protection.

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Sections 502.012(15) and 502.014(2)(b), F.S., gives the department rulemaking authority to adopt various documents as they relate to the Division of Dairy.

Section 633.557, F.S., gives the department rulemaking authority to remove exemptions when necessary to preserve public health, safety, and welfare.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

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