

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2072

SPONSOR: Agriculture and Consumer Services Committee and Senator Geller

SUBJECT: Department of Agriculture and Consumer Services

DATE: February 27, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/6 amendments</u>
3.	<u> </u>	<u> </u>	<u>NR</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

This bill addresses the following administrative duties of the Department of Agriculture and Consumer Services (department):

- \$ Revises state assistance and matching fund requirements for county and district mosquito and arthropod control.
- \$ Authorizes up to five percent of annual appropriation for mosquito and arthropod control to be used for technical assistance and purchase of equipment, supplies or services.
- \$ Authorizes the collection, detention, suppression and control of mosquitoes and arthropods on public or private lands when determined by the Commissioner of Agriculture to pose a threat to human or animal health.
- \$ Authorizes the Commissioner of Agriculture to issue an animal health declaration for a specified duration and geographic area when an animal infectious disease that can be transmitted by mosquitoes or arthropods is discovered.
- \$ Creates the Pest Control Enforcement Advisory Council.
- \$ Allows fees and fines to be used for education in pest control.
- \$ Increases the annual registration fees for registered pesticides from \$225 to \$250.
- \$ Reclassifies forgery of certain marketing orders or failure to produce certain marketing orders from a second degree misdemeanor to a third degree felony.
- \$ Increases the maximum fees for health forms, certificates, certifications, permits and quality assurance programs.
- \$ Allows condemnation and destruction of any animal that is liable to spread contagious, infectious or communicable disease when a state or agricultural emergency is declared.
- \$ Allows cooperation with and payment for services rendered by the United States Department of Agriculture accredited veterinarians.
- \$ Allows the department to charge for distribution of brucella vaccine.

- \$ Allows the department to charge a fee of not more than two percent of a grantee's allocation to recoup the costs of services provided in administering community based grants.
- \$ Increases the maximum fees for use of animal disease diagnostic labs.
- \$ Provides for all aquaculture licenses and certificates to expire annually.
- \$ Transfers the Sturgeon Production Working Group from the Department of Environmental Protection to the department.
- \$ Revises the fine for violations of the Florida Food Safety Act by retail stores or food establishments from \$5,000 to \$5,000 per violation.
- \$ Allows for certificates of compliance to be issued to food establishments to facilitate food exportation.
- \$ Requires specific actions for continued violations of nutritional claims on food labeling.
- \$ Requires all government aircraft to abide by the state wildfire Aviation Plan while operating near wildfires.
- \$ Provides penalties for leaving recreational fires unattended.
- \$ Provides that certain managerial positions within the Division of Forestry are classified as Selected Exempt Service.
- \$ Provides an exemption from amusement ride set-up inspections for kiddie rides provided that no more than three rides are operated at the event, none of which exceed a capacity of 12 persons, and the ride has been inspected within six months.
- \$ Revises reporting requirements for fair ride accidents.
- \$ Permits best management practices to be developed and voluntarily implemented for any water body, regardless of whether a total maximum daily load has been established.
- \$ Allows the department, as well as the office of the state attorney and the Department of Legal Affairs, to enforce price gouging laws.
- \$ Redefines the term "educational institutions".
- \$ Designates the USDA Service Center Building in Bartow, Florida as the John W. Hunt Building.

This bill amends sections 370.31, 388.261, 388.281, 388.361, 388.45, 403.067, 403.709, 482.2401, 487.041, 496.404, 500.121, 500.148, 501.160, 570.07, 570.53, 573.124, 585.002, 585.08, 585.09, 585.105, 585.11, 585.21, 585.61, 590.02, 590.11, 590.125, 597.020, and 616.242 of the Florida Statutes.

This bill creates section 482.243 of the Florida Statutes and one undesignated section of law.

This bill repeals section 585.10 of the Florida Statutes.

II. Present Situation:

Division of Agricultural Environmental Services

Section 388.261(1) & (2) and section 403.709(e) of the Florida Statutes mandate existing state funding authority for the support of local mosquito control. These varying sections contain conflicting standards for determining the allocation of state aid for local mosquito control. In addition, the Commissioner of Agriculture's authority is vague regarding the ability to direct the state's resources to provide mosquito control assistance and to use direct funds to provide support when requested in responding to a human or animal health threat.

Section 388.281, F.S., enumerates how state funds for mosquito control may be used. The Commissioner of Agriculture is not currently provided with the statutory authority to respond to public and animal health threats posed by mosquitoes or to issue declarations in individual counties to respond to animal health emergencies.

Currently, the use of monies from pest control administrative fines is limited to research projects. Some compliance problems are better addressed through greater education of applicators about proper pest control procedures and legal requirements. The pest control industry does not have an advisory council to provide the Department of Agriculture and Consumer Services (department) with input regarding policies and practices needed to improve enforcement of the pest control law. The pesticide registration fee is \$225 and has not been increased since 1992. As a result, trust fund expenditures for the administration and enforcement of chapter 487, F.S., relating to pesticides, exceed the department's current income by approximately \$335,000. Additional funds are needed to pay for existing operations to assure the safe handling, storage, distribution and use of pesticides to protect consumers, workers and the environment. Additional program efforts are also needed to work with growers and distributors to assure that highly toxic materials are securely stored.

Division of Animal Industry

The Division of Animal Industry has the statutory authority to impose fees for services and the health forms and certificates it provides. Authority is needed to establish fees for certifications, permits and quality assurance programs. The current fee cap is \$200, except for a \$1,500 fee for quarantine requirements for horses imported from countries where contagious equine metritis exists. The costs for administering this program have increased and are not covered by current fee income.

The statutes do not currently address the threat of emerging foreign animal diseases, such as Mad Cow disease in Europe, or the threat of bioterrorism which could bring these diseases to our shores. The department needs the clear authority to condemn and destroy animals, regardless of their condition, to prevent the further spread of the disease.

The department contracts individually with private veterinary practitioners for assistance in carrying out its duties and responsibilities. With the threat of emerging foreign diseases and increasing awareness of disease prevention, it is imperative that the department develop a public-private partnership to assist in protecting the public and the state's animal industries.

Each biological product intended for diagnostic or therapeutic purposes for animals, which is manufactured for sale or sold in Florida, is approved by the United States Department of Agriculture. Approval of the state veterinarian is not required. To protect animal health and the marketing of livestock, it is important that the department and the state veterinarian be knowledgeable about all biologicals for animals sold in the state.

The current fee cap for services provided by the department's animal disease diagnostic laboratory is set at \$15. Comparisons done with other states, university and private diagnostic laboratories show that the department's current cap is well below the national average.

Division of Aquaculture

The Sturgeon Production Working Group (SPWG) was created to promote commercial production and stock enhancement of sturgeon in the state. Since its inception, the SPWG has been under the jurisdiction of the Department of Environmental Protection (DEP). Under DEP's permitting authority, shellfish processor permits were valid for one year. Two years ago, the authority for aquaculture regulation was transferred to the department, but permit length was not formally established and requires clarification.

Division of Food Safety

The Division of Food Safety (division) receives numerous requests each year for an "Export Certificate" or a "Certificate of Free Sale". These requests are made by Florida businesses which export food to foreign countries. The notarized certificates state that the food establishment is currently in compliance with the various sanitation and permit requirements of chapter 500, F.S., The Florida Food Safety Act. A certificate is not issued if the firm is not in compliance, or if the firm is not inspected by the division. These certificates are required by many countries before accepting imported food shipments. Although these certificates are available through the federal government, the wait can sometimes take more than one month. The department has the ability to issue such certificates in less than five business days from the date of request. This would provide a great economic benefit to Florida food businesses.

The department is authorized to impose a fine not exceeding \$5,000 against any retail food store or food establishment that has violated the Florida Food Safety Act. When it has been determined that a violation of the food labeling law has occurred, the department has several sanctions set forth under current law which may be imposed.

Division of Forestry

The department does not have the statutory authority to provide meals to firefighters while they are battling wildfires. It does have the authority to provide supplemental food and drinks. The department needs the authority to provide food and nutrition to emergency workers when they are unable to leave the emergency situation and obtain food.

During an on-going wildfire, certain government aircraft are exempt from abiding by certain airspace restrictions. A smoke filled sky is a very dangerous place to operate an aircraft. By requiring all state, regional and local government aircraft to abide by the Wildfire Aviation Plan, safety would increase since all air travel would be coordinated by an appropriate incident manager.

State law prohibits anyone from leaving a recreational fire unattended or unextinguished. However, there are no provisions in place for enforcement. The current definition of certified prescribed burn is unclear as to whether or not it applies only to broadcast burns, the prescribed burning of forest or grass wildlands.

When Service First was implemented, several managerial and supervisory positions within the Division of Forestry were left as career service. The Service First legislation moved similar and

even lower positions to Selected Exempt Service, but exempted these and all other special risk positions in state government. The department has since reevaluated these positions and determined that due to the level of decision making and management duties, these positions should be transferred to Selected Exempt Service and serve at the pleasure of the agency head.

Division of Marketing and Development

The Division of Marketing and Development (division) receives all community budget requests for entry into the department's budget. Each request is evaluated against established minimum project criteria and then processed for approval and inclusion in the budget. When a local project is funded by the Legislature, the division administers the disbursement of funds for these contracts including verification of the grantee's compliance with the various provisions of the contract. The division inspects each of the grantee's projects for visual verification of compliance with the contract's scope of work. The costs associated with these services is not addressed in statute. Other agencies, such as the Fish and Wildlife Conservation Commission and the Department of Management Services are permitted to assess similar fees for services provided.

Division of Standards

Prior to July 1, 2000, s. 616.242, F.S., allowed amusement rides to play at small public events without a set-up inspection if there were no more than three amusement rides and none of the rides exceeded a capacity of eight persons. This provision was known as the "3&8" rule and it was removed from law at the request of the Division of Standards, Bureau of Fair Ride Inspections (bureau). The bureau requested the exemption be removed from the statutes due to problems with the provision, i.e. determining ride capacity, not prohibiting certain adult rides, difficulty with enforcement, and the mistaken belief that the impact on the inspection program would be minimal. However, the removal of the exemption has actually had a significant impact on the inspection program, in that it has increased travel and overtime costs without increasing inspection revenues. More importantly, it has resulted in a noticeable reduction in the inspection time available for large events and high risk rides during the bureau's busiest season. In retrospect, the bureau believes the exemption should have been modified rather than eliminated. The department has indicated that these particular rides are those used primarily by rental companies, and, because of their size, are less likely to create an accident or an injury in the case of an accident. There are about 18 (out of 226) amusement companies that have temporary amusement rides permitted in the state to run at small events. During the past two years, no reportable accidents have occurred at these events.

Office of Agricultural Law Enforcement

Presently, it is a second-degree misdemeanor for a person to forge a marketing order of agreement. In other statutes that the department is responsible for enforcing, similar infractions are a third degree felony, such as in animal industry. Further, under general law, it is a third degree felony to create a forged document.

Office of Water Policy

The department is only authorized to develop and implement best management practices by rule, including incentives to producers where a total maximum daily load has been established. It needs the authority to assist agricultural producers in protecting water quality before water bodies are classified as impaired and need a total maximum daily load. This would enhance environmental protection and make the most efficient use of state resources.

III. Effect of Proposed Changes:

Section 1. Amends s. 370.31, F.S., to transfer the Sturgeon Production Working Group from the Department of Environmental Protection to the Department of Agriculture and Consumer Services (department). Revises the membership of the working group to include a representative of a private nonprofit organization involved in sturgeon production work. Revises the procedure the chair of the working group would use to call a meeting. Requires the department to keep a complete record of the proceedings of each meeting. Allows a quorum to consist of a majority of the group members, rather than specified members. Provides for per diem and travel expenses for the group members.

Section 2. Amends s. 388.261, F.S., to provide for counties or districts to receive up to \$50,000 per year for three years for any new program for the control of mosquitoes or other arthropods which serves an area not previously served by the county or district. Provides that an eligible county or district shall receive state funds and supplies, services, and equipment on a dollar-for-dollar matching basis up to a limit of \$120,000. Provides for prorating of funds when more than one mosquito control agency exists within a county. Authorizes the Commissioner of Agriculture to waive matching fund requirements when an immediate threat to human or animal health arises. Authorizes the department to use state matching funds when requested by a district or county. Authorizes the department to use up to five percent of funds appropriated annually by the Legislature to provide technical assistance to the counties or districts, or to purchase equipment, supplies or services necessary to administer this program.

Section 3. Amends s. 388.281, F.S., to provide for a dollar for dollar, rather than fifty percent match for an integrated program for the control of mosquitoes. Clarifies what the matching state funds appropriated for this program are to be used only for those activities directly related to the detection and suppression of mosquitoes through integrated program efforts.

Section 4. Amends s. 388.361, F.S., to authorize the department to respond to threats to human or animal health on public or private land as determined by the Commissioner of Agriculture. Requires the department, prior to the start of treatments, to consult with the mosquito control districts in the area, the Department of Health, the Department of Environmental Protection, and the Fish and Wildlife Conservation Commission.

Section 5. Amends s. 388.45, F.S., to clarify conditions constituting a threat to public health and the issuance of declarations. Authorizes the Commissioner of Agriculture to issue a declaration in specific counties in response to threats of animal health. Requires the declaration to contain the geographical boundaries and the duration of the declaration. Requires the Commissioner to immediately notify the State Health Officer and the agency heads of the Department of

Environmental Protection and the Fish and Wildlife Conservation Commission upon issuance of an animal health declaration.

Section 6. Amends s. 403.067, F.S., to permit best management practices to be developed and voluntarily implemented for any water body, regardless of whether a total maximum daily load has been established. Allows the Department of Environmental Protection to consider the best management practices program in determining the need for a total maximum daily load.

Section 7. Amends s. 403.709, F.S., to delete the minimum county allocation to local mosquito control agencies from waste tire fees. Authorizes monies collected from waste tire fees to be used for a dollar-for-dollar match for county and district mosquito control.

Section 8. Amends s. 482.2401, F.S., to authorize administrative fines to be used for pest control education.

Section 9. Creates s. 482.243, F.S., to establish the Pest Control Enforcement Advisory Council. Provides for powers, duties, membership, and procedures of the council. Provides for the council to receive reports of pest control enforcement activity conducted by the Division of Agricultural Environmental Services, provide advice to the department on the conduct of pest control enforcement activities, receive reports on disciplinary actions, and make recommendations, subject to a majority vote, directly to the Commissioner of Agriculture for actions to be taken with respect to the regulation of pest control services and practices that the council has reviewed.

Section 10. Amends s. 487.041, F.S., to increase the pesticide brand registration fee from \$225 to \$250.

Section 11. Amends s. 500.121, F.S., to revise the fine for violations of chapter 500, F.S., by retail food stores or food establishments from \$5,000 to \$5,000 per violation. Establishes testing procedures when a violation has been identified concerning nutrient claims on product labels. Provides for sanctions and recovery of department costs for tests or examinations.

Section 12. Amends s. 500.148, F.S., to allow the department to provide a certificate allowing a food establishment in compliance with state guidelines to export food to a foreign country. Authorizes the department to recover the cost of this program.

Section 13. Amends s. 501.160, F.S., to allow the department, as well as the office of the state attorney and the Department of Legal Affairs, to enforce prohibitions of unconscionable prices on the rental or sale of essential commodities.

Section 14. Amends s. 570.07, F.S., to authorize the department, under emergency conditions, to provide meals when personnel cannot leave the emergency incident location.

Section 15. Amends s. 570.53, F.S., to authorize the department to assess and collect a fee to recoup the cost of services provided in administering grants. Provides for the fee to be deposited into the General Inspection Trust Fund.

Section 16. Amends s. 573.124, F.S., to increase the penalty for marketing order violations from a misdemeanor of the second degree to a felony of the third degree.

Section 17. Amends s. 585.002, F.S., to authorize the department to establish fees to include certifications, permits, and quality assurance programs. Increases the fee cap on most services from \$200 to \$500. Increases the fee cap for carrying out the quarantine requirements relating to horses imported from foreign countries where contagious equine metritis exists from \$1,500 to \$1,800.

Section 18. Amends s. 585.08, F.S., to authorize the department to condemn and destroy any animal likely to spread any contagious, infectious, or communicable disease when a state or agricultural declaration of emergency has been declared by the Governor or the Commissioner of Agriculture.

Section 19. Amends s. 585.09, F.S., to delete a reference to a repealed section of the statute.

Section 20. Repeals s. 585.10, F.S., relating to indemnity payments for animals condemned or destroyed due to exposure to brucellosis or tuberculosis.

Section 21. Amends s. 585.105, F.S., to allow the department to recover the cost of the brucellosis vaccine rather than providing it without cost to Florida cattle owners.

Section 22. Amends s. 585.11, F.S., to authorize the department to work with the United States Department of Agriculture accredited veterinarians under a cooperative agreement.

Section 23. Amends s. 585.21, F.S., to require that biological products sold in the state have the department's written permission prior to sale.

Section 24. Amends s. 585.61, F.S., to increase the fee cap from \$15 to \$300 for services provided by the department's animal disease diagnostic laboratories.

Section 25. Amends s. 590.02, F.S., to provide that certain management positions within the Division of Forestry are classified as Selected Exempt Service. Requires all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan.

Section 26. Amends s. 590.11, F.S., to provide that it is a misdemeanor of the second degree for violations of recreational fire provisions.

Section 27. Amends s. 590.125, F.S., to revise requirements for certified prescribed burning. Renames procedures for protecting wild lands from wildfires.

Section 28. Amends s. 597.020, F.S., to provide for yearly renewal of shellfish processor permits. Provides that the permits will automatically expire on June 30 of each year.

Section 29. Amends s. 616.242, F.S., to exempt from department inspection a kiddie ride used at a public event, provided there are no more than three rides at the event, none of which exceed a

capacity of 12 persons, and the ride has an inspection certificate issued within the preceding six months. Authorizes the department to determine, by rule, the capacity of the ride unless specified by the manufacturer. Places responsibility of compliance upon the owner of the kiddie ride. Requires owners or managers to report certain accidents by telephoning the department within four hours after the occurrence of the accident and then to submit a written report to the department within 24 hours.

Section 30. Amends s. 496.404, F.S., to redefine the term “educational institutions”.

Section 31. Designates the USDA Service Center Building in Bartow, Florida as the John W. Hunt Building.

Section 32. Provides that this act shall take effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill creates or increases the following fees:

Section 10. Increases the pesticide brand registration fee from \$225 to \$250.

Section 11. Increases fines which may be imposed against any retail food store or food establishment for violation of the Florida Food Safety Act from \$5,000 to \$5,000 per violation.

Section 12. Allows the department to recover costs associated with issuance of a report of compliance with laws and rules pertaining to food products to food establishments exporting food to a foreign country.

Section 15. Allows the division of Marketing and Development to assess a fee of up to 2 percent of community budget request allocations appearing in the department’s budget.

Section 21. allows the department to charge its cost for distribution of brucella vaccine.

Section 24. Increases fees for use of the animal disease diagnostic laboratory from \$15 to \$300 per service, and removes a \$70 limit on the fee which may be charged for a necropsy.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

	Fund	FY 2002-03	FY 2003-04	FY 2004-05
<u>OPERATING COSTS:</u>				
Non-Recurring-				
Food Safety - Export Certificates - 1 Support Staff OCO package	GITF*	2,000	0	0
Total Non-Recurring:		\$2,000	0	0
Recurring-				
Positions-1 FTE in Leon Co. Salaried and benefits				
Food Safety-Export Certificates 1 Administrative Assistant**	GITF	33,177	34,172	35,197
Other Personal Services				
Food Safety-Export Certificates Clerical Support	GITF	15,000	15,000	15,000
Expenses				
Sturgeon Production Working Group – Travel expense	GITF	5,000	5,000	5,000
Pest Control Advisory Council Travel Expense	GITF	10,000	10,000	10,000
Food Safety- Export Certificates Expense Pkg.-Support staff	GITF	8,019	8,019	8,019

Other				
Food Safety-Export Certificates				
Printing, office supplies and postage	GITF	10,000	10,000	10,000
Total Recurring Costs:	GITF	\$81,196	\$82,191	\$83,216
<u>ANTICIPATED REVENUES:</u>				
Recurring:				
Pesticide Brand				
Registration Fee	GITF	335,000	335,000	335,000
Food Safety				
Export Certificate - 7,500				
Estimated @ \$10	GITF	75,000	75,000	75,000
Marketing 2% cost recovery fee (Based on number of projects and costs to division.)	GITF	Unknown	Unknown	Unknown
Animal Industry				
Cost recovery for brucella vaccine	GITF	80,000	80,000	80,000
Total Recurring Revenues:	GITF	\$490,000	\$490,000	\$490,000
<u>NON-OPERATING COSTS:</u>				
Administrative/Indirect				
Food Safety-Export Certificates	GITF	Unknown	Unknown	Unknown
General Revenue Service Charge				
Pesticide Brand Registration	GITF	24,455	24,455	24,455
Food Safety-Export Certificate	GITF	5,475	5,475	5,475
	Fund	FY 2002-03	FY 2003-04	FY 2004-05
Animal Industry - brucella vaccine	GITF	5,840	5,840	5,840
Total Non-Operating Costs:	GITF	\$35,770	\$35,770	\$35,770
TOTAL COSTS:		\$118,966	\$117,961	\$118,986
TOTAL REVENUES:		\$490,000	\$490,000	\$490,000

*General Inspection Trust Fund

**Salaries and benefits were entered at the minimum and increased three percent for the second and third years in anticipation of salary increases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:

Develops a grants management and qualification system within the Department of Agriculture for agricultural education and promotion facilities. (WITH TITLE AMENDMENT)

#2 by Health, Aging and Long-Term Care:

Restores current law limitations on fines against retail food establishments. (WITH TITLE AMENDMENT)

#3 by Health, Aging and Long-Term Care:

Removes authority for the Department of Agriculture to assess up to a 2 percent fee for the cost of administering community budget request allocations appearing in its budget. (WITH TITLE AMENDMENT)

#4 by Health, Aging and Long-Term Care:

Clarifies that all broadcast burning is subject to certification; clarifies the Division of Forestry actions and initiatives pertaining to wildfire hazard treatment; and clarifies that the department initiatives include, but are not limited to burning and mechanical and chemical treatments to control wildfires.

#5 by Health, Aging and Long-Term Care:

Adds knowingly providing false information to obtain an authorization for prescribed burning as a basis for an administrative fine. (WITH TITLE AMENDMENT)

#6 by Health, Aging and Long-Term Care:

Clarifies the definition of a non-residential farm building. (WITH TITLE AMENDMENT)